

ARKANSAS STATE
CLAIMS COMMISSION

FEB 22 2013

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BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr.
☐ Mrs.
☒ Ms.
☐ Miss

EFFIE COLLINS

Claimant

vs.

State of Arkansas, Respondent

AR State Board of Embalmers & Funeral
Directors

COMPLAINT

Loss of Wages, Other (Revocation
of License-Later Overturned)

Effie Collins

(Name)

the above named Claimant, of P.O. Box 601, Blytheville

(Street or R.F.D. & No.)

(City)

AR 72316 (870) 763-6405

(State) (Zip Code) (Daytime Phone No.)

County of Mississippi

represented by Larry J. Steele

(Legal Counsel, if any, for Claim)

of P.O. Box 561, Walnut Ridge, AR 72476

(Street and No.)

(City)

(State)

(Zip Code)

(Phone No.)

(870) 886-5840 (870) 886-5873

(Fax No.)

says:

State agency involved: Board of Embalmers and Funeral Directors Amount sought: \$3,000,000

Month, day, year and place of incident or service: May 28, 2009 and March 5, 2011

Explanation: On May 28, 2009, the Arkansas State Board of Embalmers and
 Funeral Directors revoked the funeral director license of Effie Collins
 along with the license of Collins Chappel Mortuary, Inc., owned by
 Effie Collins. On March 5, 2011, the Board denied Effie Collins'
 request to reinstate her funeral director license and the license of
 Collins Chappel Mortuary, Inc. The facts are more particularly
 described in "Exhibit A" attached hereto, a pending action on Effie
 Collins' behalf in federal court.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

No

; when?

(Yes or No)

(Month)

(Day)

(Year)

; to whom?

(Department)

; and that the following action was taken thereon:

and that \$_____ was paid thereon: (2) Has any third person or corporation an interest in this claim? _____; if so, state name and address

(Name)

(Street or R.F.D. & No.)

(City)

(State)

(Zip Code)

and that the nature thereof is as follows:

; and was acquired on _____

; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes
 that they are true.

Larry J. Steele

(Print Claimant/Representative Name)

Larry J. Steele

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Walnut Ridge, Arkansas

OFFICIAL SEAL - #12389103
 JANET A. STEELE
 (SEAL) NOTARY PUBLIC-ARKANSAS
 RANDOLPH COUNTY
 MY COMMISSION EXPIRES: 09-25-22

on this

25th

day of

January

(City)

(State)

2013

(Date)

(Month)

(Year)

Janet A. Steele

(Notary Public)

SFI- R7/99

My Commission Expires:

9-25-22

(Month)

(Day)

(Year)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

EFFIE COLLINS

PLAINTIFF

VS.

NO.3:12-CV-00123-DPM

ARKANSAS STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS;
By its Board of Directors,
DR. GEORGE SMITH;
R.L. OCKER;
EDDIE L. HAWKINS, JR.;
TONY SMITH;
GARLAND CAMPER;
JAMES "TERRY" WOODARD;
PATRICIA ROBERTS;
BOYD HEATH;
and EFFIE CLAY;
and RACHAEL MCGREW; Executive Director,
Individually and In Their Official Capacities;
RODNEY E. WILLIAMS;
LARON JACKSON, Owner, Christian Funeral Directors, Inc.;
CHRISTIAN FUNERAL DIRECTORS, INC.;
BILLY HOLIFIELD, Manager, Cobb Funeral Home;
COBB FUNERAL HOME;
LaFONCE LATHAM, Owner/Manager,
Wilson Funeral Home;
and WILSON FUNERAL HOME

DEFENDANTS

FIRST AMENDED COMPLAINT

1. That Plaintiff, Effie Collins ("Collins"), is a citizen and resident of the Jonesboro Division, Mississippi County, Arkansas, which is a part of the Eastern District of Arkansas; Plaintiff Collins is owner of Collins Chapel Mortuary, Inc.

2. That Defendant, Arkansas State Board of Embalmers and Funeral Directors, is a state agency; that policy decisions of the Arkansas State Board of

"Exhibit A"

Embalmers and Funeral Directors are made by its Board of Directors ("Board") acting in their official capacities so that such Board is financially responsible for any illegal and unconstitutional actions of its Board of Directors in their official capacities insofar as they deprive an individual of federally protected rights under color of state law.

3. That Defendants Dr. George Smith ("Smith"), R.L. Ocker ("Ocker"), Eddie L. Hawkins, Jr. ("Hawkins"), Tony Smith ("Smith"), Garland Camper ("Camper"), James "Terry" Woodard ("Woodard"), Patricia Roberts ("Roberts"), Boyd Heath ("Heath"), and Effie Clay ("Clay") are or were the duly appointed, qualified, and acting Board of Directors of the Arkansas State Board of Embalmers and Funeral Directors during the pertinent times mentioned hereinafter; that Rachael McGrew ("McGrew") was the Executive Director and/or Executive Secretary of the Arkansas State Board of Embalmers and Funeral Directors during the pertinent times mentioned hereinafter, and that such Defendants are being sued herein in their official capacities for injunctive relief, as well as in their individual capacities, for engaging in a cold, cruel, and malicious campaign to destroy, humiliate, and embarrass Plaintiff herein as a consequence of certain Board members' prior relationship with the Plaintiff.

4. That Defendant, Rodney E. Williams ("Williams"), is a former employee of Plaintiff Collins and Collins Chapel Mortuary, Inc.; Defendant Williams is also the agent of Defendant, Laron Jackson, owner of Defendant, Christian Funeral Directors, Inc. in Memphis, Tennessee. That liability for the acts of Rodney E. Williams is imputed to Christian Funeral Directors, Inc. who is made a Defendant as more fully explained herein.

5. That Defendant, Billy Holifield ("Holifield"), is manager of Cobb Funeral Home in Blytheville, Arkansas; Defendant Holifield is the agent of Cobb Funeral Home. That liability for the acts of Billy Holifield is imputed to Cobb Funeral Home who is made a Defendant as more fully explained herein.

6. That Defendant, LaFonce Latham ("Latham"), owner and manager of Wilson Funeral Home in Blytheville, Arkansas, is the agent of Wilson Funeral Home. That liability for the acts of LaFonce Latham is imputed to Wilson Funeral Home who is made a Defendant as more fully explained herein.

7. That the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343, this being a suit authorized by law to redress the deprivation under color of law, statute, regulations, custom, and usage of the state of rights, privileges, and immunities secured by the laws and Constitution of the United States; and that Plaintiff specifically claims the right to proceed under 42 U.S.C. § 1983, the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States, and the Arkansas Civil Rights Act.

8. Plaintiff requests equitable as well as monetary remedies. That in particular, Plaintiff asserts she is entitled to the protection of this federal forum because Board officials acting under color of state law have violated her federally protected rights of substantive due process, a violation of her civil rights, equal protection and due process, including, but not limited to, discrimination based on her sex, female, have deprived her of property rights by suspending and revoking a license to practice her profession as a funeral director and a license to operate her business, Collins Chapel

Mortuary, and a liberty interest in her reputation by not according her procedural due process of law, the Board's suspension and revocation of Plaintiff's license as a funeral director and suspension of Collins Chapel Mortuary's funeral establishment license. Plaintiff requests this Court, pursuant to its inherent authority, restore her license as a funeral director and restore the license of Collins Chapel Mortuary. Plaintiff seeks damages as allowed by law and to be proven at trial, to be set by a jury for more than is required for federal diversity jurisdiction, as more particularly described herein.

9. Plaintiff alleges a conspiracy among all named Defendants to prohibit her from practicing her profession of a funeral director and operating her business, Collins Chapel Mortuary, Inc., by denying her a funeral director's license and denying Collins Chapel Mortuary, Inc. a license.

Background

10. In 2007, Plaintiff held an Arkansas State Board of Embalmers and Funeral Directors license as a funeral director which she received in 1981.

11. In 2007, Plaintiff, owner of Collins Chapel Mortuary, Inc., a funeral establishment, which she established in 1994, was licensed by the Arkansas State Board of Embalmers and Funeral Directors.

12. Plaintiff and a present Board member, Defendant Terry Woodard, dated during the early 1980s with the romantic relationship eventually ending.

13. Defendant Effie Clay was an acquaintance of Defendant Woodard and did not appreciate the relationship Plaintiff had with Defendant Woodard.

14. Defendant Clay and Plaintiff had personal disagreements as a result of Plaintiff's relationship with Defendant Woodard.

15. Defendants, Rachel McGrew (Executive Director) and Terry Woodard, were and are close friends.

16. That Roderick Hicks, a former employee of Plaintiff Collins, and Defendant Garland Camper, are close friends.

17. That Plaintiff Collins terminated Roderick Hicks from his employment with her.

18. A block of the Arkansas State Board of Embalmers and Funeral Directors, consisting of Defendants Garland Camper, Terry Woodard and Effie Clay emerged whereby such block engaged in a calculating and intentional course of conduct to deprive Plaintiff of a license as an Arkansas state licensed funeral director and a license to operate Collins Chapel Mortuary, Inc. and deprive Plaintiff of her federally protected rights of due process, property rights, and discrimination based on Plaintiff's sex, female.

Hearing (January 22, 2008)

19. In early 2007, the Office of State Registrar and Director, Division of Vital Records, Arkansas Department of Health filed a claim against Collins Chapel Mortuary, Inc. and Effie Collins alleging that they had violated the funeral director licensing law by violating the statute and regulation for failing to file a death certificate within ten days. Plaintiff Collins admitted the infraction due to a breakdown in communication with her staff.

20. Claims against Effie Collins further stated she had failed to carry out her duties as a managing funeral director to properly oversee the operation of a funeral home, so as to insure the timely filing of death certificates, and had not done all things necessary to meet the needs and desires of the arranger.

21. The notice of hearing, factual allegations, and charges were signed by Defendant, Rachael McGrew, Executive Secretary, on October 2, 2007.

22. The Board requested copies of Plaintiff Collins' funeral contracts to compare income.

23. On January 22, 2008, a hearing was held by the Arkansas State Board of Embalmers and Funeral Directors on the complaint. Plaintiff's attorney moved that the matter be continued because Plaintiff Collins could not attend. Plaintiff's attorney also presented argument on a previously filed motion for requesting Board member, Defendant, Effie Clay, to recuse because of the conflict of interest described previously. Both motions were denied, a violation of Plaintiff's rights of due process and equal protection.

24. Plaintiff Collins' attorney moved for a continuance so that she could be present and offer testimony at the hearing.

25. Although the witnesses were located in Little Rock and would not be unduly burdened or inconvenienced by a continuance, the Board denied Plaintiff's motion and proceeded with the hearing in Plaintiff's absence.

26. Plaintiff's attorney moved to disqualify Defendant Clay, vice chair, based on past relationship with Plaintiff Collins and Board member, Defendant Woodard.

27. Defendant Clay refused to disqualify herself.

28. The complaint against Plaintiff alleged Plaintiff's failure to issue death certificate within ten (10) days.

29. The death certificate was issued and filed by the health department.

30. The examination was conducted by vice-chair, Defendant Clay.

31. Defendant Clay did not follow the administrative procedure, calling Effie Collins out of order.

32. Steve Whisnant, a field representative with Vital Records of the Arkansas Department of Health and Human Services, testified that this incident was the first and only violation involving Plaintiff Collins, and he had always gotten along with and worked well with Plaintiff Collins in the past.

33. Plaintiff Collins' attorney pointed out that her violation was a single, isolated violation, and that the Board, in the past, had only sanctioned respondents who engaged in gross and consistent violations of similar nature.

34. The Board's attorney indicated that he did not recommend the sanction; the Board nevertheless suspended Ms. Collins' funeral director's license for a period of one year and fined her \$1,500.00.

35. For the Board to suspend a director's license, prior cases required gross and consistent conduct.

36. Defendant Camper moved that Plaintiff Collins appear within 30 to 60 days for sentencing.

37. Plaintiff Collins denied being repeatedly personally contacted, and then only through her employees.

38. Plaintiff Collins did return Steve Whisnant's call and testified that her employees did not forward the messages.

39. Defendant Camper stated, "I'll move that we suspend Ms. Collins' funeral director's license for a period of one year and also we fine her establishment license a fine of \$1,500.00. Also a letter of reprimand goes to her stating the deficiencies and the fine should be paid in a matter of 30 days."

40. Defendant Clay provided a second to Defendant Camper's motion.

41. That motion passed unanimously and the hearing was adjourned.

42. Other matters heard by the Board similar to Collins where multiple violations by other funeral directors and the Board did not suspend license or fine the parties.

43. No family member ever called or complained about Plaintiff Collins. The complaint was brought by the state.

44. On appeal to the Pulaski County Circuit Court, Sixth Judicial District, Sixteenth Division, the court admitted it had no idea of what was a fair kind of penalty and found that the appeal is denied and the decision of the Board is binding.

45. Plaintiff Collins' attorney again addressed the Motion to Disqualify at the hearing before the Board on January 22, 2008.

46. Defendant Clay, unlike the deputy commission in Wacaser, did not withdraw from the proceedings. Instead, the Board merely pointed out that the

Hearing Officer was the person conducting the hearing and Defendant Clay was not voting. Defendant Clay, however, was fully involved in the hearing. It was Defendant Clay who conducted the Board's examination of the only witness who testified during the hearing. Furthermore, the fact that Defendant Clay was not voting during the proceedings has no bearing on whether Plaintiff Collins received a fair hearing.

47. An administrative board must not only be fair, but must also *appear* fair.

48. Plaintiff Collins produced evidence of a past relationship between herself and Defendant Clay.

49. Plaintiff Collins asserted that the nature of the relationship was such that would cause Defendant Clay to have a personal bias against Plaintiff Collins, which might cause her to be partial during the proceedings.

50. Certainly, this is a reasonable suspicion of unfairness.

51. Furthermore, the Motion should have been granted, because it was timely, sufficient, and filed in good faith.

52. Plaintiff Collins did not attend the hearing on January 22, 2008, because she was not notified by her attorney.

53. The Board, however, denied the Motion for Continuance.

54. Because the Board did not continue the hearing, the only testimony heard was that of Mr. Steve Whisnant.

55. Mr. Whisnant testified that he had attempted to contact Plaintiff Collins on several occasions regarding the death certificate that had not been filed.

56. Mr. Whisnant also testified that someone had complained to Vital Records about the death certificate not being filed.

57. Mr. Whisnant, however, was unsure of the circumstances of the complaint, the identity of the person, and the relationship between the complainant and the deceased. Id.

58. Mr. Whisnant further testified that the incident in question was Plaintiff Collins' first violation.

59. Because Plaintiff Collins was denied an opportunity to present evidence at the initial hearing, the Board was forced to base its decision on speculation and inference.

60. It is obvious from the record that the Board wanted some clarification of the only testimony it heard.

61. The Board should have heard Plaintiff Collins' testimony.

62. Because the Board failed to do so, it failed to hear material evidence, and thus, the interests of justice were certainly not served and Plaintiff was denied due process. This failure amounts to an abuse of discretion.

63. The Board found that Plaintiff Collins violated Ark. Code Ann. § 20-18-601(a)(1) & (b) by failing to file a death certificate with the state registrar within ten (10) days after the death of Fannie Mae Jackson. Plaintiff Collins admitted this violation, although she was not able to testify at her hearing to provide an explanation as to her failure to timely file the death certificate. The Board also found that Plaintiff Collins

violated Ark. Code Ann. § 20-18-303. The only two subsections of that provision that could possibly apply to Plaintiff Collins, state as follows:

- (a) Any person having knowledge of the facts shall furnish such information as he or she may possess regarding any birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, divorce, or annulment upon demand of the State Registrar of Vital Records.
- (b) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the Division of Vital Records a list showing all dead bodies embalmed or otherwise prepared for final disposition or dead bodies finally disposed of by the funeral director during the preceding month. The list shall be made on forms provided by the state registrar.

64. Plaintiff Collins indicated that she then received a message from someone from Vital Records who said if she did not file the certificate by the following Monday, he would file the certificate himself. Id. Plaintiff Collins further stated that because neither her assistant nor secretary could produce the death certificate, she knew it could not be filed by the following Monday, so she let the person who called from Vital Records file the certificate. Plaintiff Collins expressed that it was not an intentional violation on her part. As owner and director, she wore many hats, and she apologized for the miscommunication and employee irresponsibility. She also indicated that she had disciplined her employees because of the incident.

67. The "arrangers" (the decedent's family members) were happy with the services provided by Plaintiff Collins and her funeral home. None of the decedent's family members ever complained about the services or the death certificate not being filed within ten days. The Board itself even recognized that the relationship between

the decedent and the person who complained to the Board is unknown. A family member (one of the arrangers) appeared on behalf of Collins at the appeal, but was not allowed to testify.

68. Plaintiff Collins admitted that she failed to file the death certificate of Fannie Mae Jackson within ten (10) days of Ms. Jackson's death. Plaintiff Collins also asserted that her failure to get the death certificate filed was not intentional, but was a result of employee irresponsibility and oversight on her part.

69. The Board suspended Plaintiff's funeral director's license for a period of one year and fined her \$1,500.00. As discussed above, the Board willfully refused to hear Plaintiff's testimony. The Board, therefore, could not and did not consider the facts and circumstances of the case when making its decision.

70. The Board completely suspended Plaintiff's funeral director license for one year. This suspension has had a major financial impact on her business and her livelihood. The Board has discretion to impose sanctions, but this sanction is plainly arbitrary and capricious, and an abuse of discretion with the Board's decisions in similar cases.

71. Counsel for Plaintiff at the hearing proffered a number of similar cases before the Board. The relevant findings and orders of the Board in each of these cases are as follows:

In the Matter of A.J. Parrish, Licensed Funeral Director, Rowell-Parish Mortuary, (2006):

Findings of Fact: That since 2004, A.J. Parrish and Rowell-Parrish Mortuary have **grossly and consistently** violated A.C.A. § 20-18-601, which requires licensed funeral directors to file death certificates within ten (10) days of the death.

Order: The funeral director's license and establishment license should be placed on probation for a period of six (6) months. As a term of this probation, the member of the funeral home staff who is primarily responsible for handling death certificates, will be required to attend a training session conducted by the Division of Vital Records.

In the Matter of Hardy Funeral Home, (2006):

Findings of Fact: The Hardy Funeral Home opened for business in 2004. The Department of Vital Records has had problems with Hardy Funeral Home **timely filing death certificates** since the opening of the funeral home.

Order: The individual and establishment license are placed on probation for six (6) months. It will be a term of the probation that Licensees attend a training session on death certificates conducted by the staff of the State Registrar and Director of the Division of Vital Records.

In the Matter of Robert Mathews, Licensed Funeral Director and A.O. Smith Funeral Home, Inc., Stamps, Arkansas, License #147, (2003):

Findings of Fact: During calendar years 2000, 2001, and 2002, the funeral home **grossly and consistently** violated A.C.A. § 20-18-601(A) and (B) which requires licensed funeral directors to file death certificates within ten (10) days of death.

Order: The Board determines that the appropriate sanction is to place Robert Mathews and the establishment license of A.O. Smith Funeral Home, Inc., Stamps, Arkansas, License #147, on probation for a period of one year.

In the Matter of Warren Strickland, Licensed Funeral Director and Davis-Strickland Funeral Home, Dermott, Arkansas, (2002):

Findings of Fact: The evidence shows that Davis-Strickland Funeral Home has, during calendar year 2000 and calendar year 2001, **grossly and consistently** violated A.C.A. § 20-18-601(a) and (b) which requires licensed funeral directors to file death certificates within ten (10) days of death.

Order: The Board orders that Respondent pay a fine of \$1,000.00 which is due thirty (30) days from the date of this Order. The Board further orders that Respondent's funeral director and funeral home license be placed on probation for a period of two (2) years. Conditions of the probation are that Mr. Strickland and Davis-Strickland Funeral Home undergo training to assist them to be able to properly comply with this regulatory requirement. Furthermore, during the period of probation Respondent's record of compliance with the death certificate law will be monitored by the Arkansas Department of Health which will report to the Board quarterly on progress made by the funeral home in complying with the statute.

In the Matter of Roy D. Hearn, Licensed Funeral Director, Perry Funeral Home, (2006):

Allegations: the complaint filed by Mike Adams, State Registrar and Director, Division of Vital Records, Arkansas Department of Health, alleges that Perry Funeral Home has **grossly** and **consistently** violated A.C.A. § 20-18-601(a) and (b) which requires licensed funeral directors to file death certificates within 10 days of death.

Hearing (March 18, 2008)

72. Vice-Chair, Defendant Clay, conducted the hearing on March 18, 2008 before the Arkansas State Board of Embalmers and Funeral Directors.

73. At the March 18, 2008 hearing, the sentencing phase, Arnold Jochums, stated on behalf of the agency, "I do not recommend the sanction."

74. Defendant Camper asked what the maximum sentence was and pushed for the maximum, yet admitted Plaintiff Collins failed to file only one certificate.

75. At the sentencing hearing on March 18, 2008, even the Board's counsel announced that he did not recommend the sanction. He explained, "[T]his case was a little different than other ones in that some of the other cases we had were people that had repeatedly failed to do lots of death certificates. This one involved one death certificate." The evidence showed that this was Plaintiff's first and only violation of the

ten (10) day rule. The evidence also indicated that the Health Department had never had any problems whatsoever with Plaintiff or her funeral home in the past. What little evidence Plaintiff was permitted to offer all tends to show that the violation was not intentional and is not likely to occur again in the future. The Board's action was "willful and unreasoning" and clearly an abuse of discretion.

76. On March 18, 2008, the Board suspended Plaintiff's license as a funeral director for a period of one year and fined her establishment \$1,500.00 based on the January 22, 2008 hearing.

77. On appeal to the Circuit Court of Mississippi County, Arkansas, Circuit Judge John Fogleman, in his Order, found, in part:

In view of the fact that a number of the Board's findings, which supported the penalties imposed, have been found to lack substantial evidence, the Board should reconsider the appropriate penalties to impose in this case. This matter is remanded to the Board of Embalmers & Funeral Directors for action consistent with the findings of the Court and this Order and appropriate penalties in light of the Court's decisions.

78. The Board failed to act on Judge Fogleman's recommendation, but did on its own motion on January 22, 2009.

79. On January 22, 2009, the Board, on its own motion, filed a subsequent complaint against Collins Mortuary Chapel, Effie Collins, owner, for acting as a funeral director while her license was suspended, and Mr. Elmer Davis, funeral director manager, for allowing Collins to act as a funeral director while he was manager of the establishment.

80. The decision made by the Board of Directors of the Arkansas State Board of Embalmers and Funeral Directors was based entirely upon hearsay evidence. The alleged complaint filed against Effie Collins and Collins Chapel Mortuary as made by a party who lacked standing. The submitting parties were not the arrangers.

81. Plaintiff was denied due process and equal protection under the 5th and 14th Amendments to the United States Constitution. Plaintiff suffers sex discrimination and was denied equal protection under the 14th Amendment to Constitution of the United States.

Hearing (May 28, 2009)

82. On April 28, 2009, the Board gave notice of hearing to be held May 28, 2009, beginning at 9:30 a.m. in the Board offices at 101 East Capitol, Little Rock, Arkansas.

83. Board members present were Dr. George Smith, R.L. Ocker, Eddie L. Hawkins, Jr., Rachael McGrew, Executive Director, Tony Smith, Chair, Garland Camper, Vice-Chair, Terry Woodard, Patricia Roberts, and Boyd Heath, Inspector.

84. Neither Plaintiff/Respondent, Effie Collins, Respondent, Elmer Davis, Respondent, Collins Chapel Mortuary, nor their attorney at the time appeared.

85. On May 28, 2009, a hearing was held by the Board and a decision was made which was adverse and against Plaintiff and Collins Chapel Mortuary.

86. During the May 28, 2009 hearing, the funeral director license issued to Elmer Davis was revoked.

87. During the May 28, 2009 hearing, the establishment license issued to Collins Chapel Mortuary, Inc. was revoked.

88. Plaintiff Collins had requested a continuance of this matter and her previous attorney was to submit a written request. Neither Collins nor her attorney appeared at said hearing due to Collins' attorney's failure to notify the Arkansas State Board of Embalmers and Funeral Directors.

89. Defendants have engaged in a course of conduct to prevent Plaintiff Collins from being able to engage in her course of business.

Hearing (March 15, 2011)

90. On March 15, 2011, a hearing was held by the Arkansas State Board of Embalmers and Funeral Directors. Before the Board were the issues of reinstating the license of Effie Collins as a funeral director and the funeral establishment license of Collins Chapel Mortuary, Inc.

91. Although request had been made through Rachael F. McGrew, Executive Secretary of the Board, and notice given, and after convening and exhibits introduced by the Board's attorney, Arnold M. Jochums, on the motion of Garland Camper, the Board arbitrarily concluded the hearing, denying Petitioner due process.

Hearing (May 24, 2011)

92. On May 24, 2011, a second hearing was held by the Arkansas State Board of Embalmers and Funeral Directors and a decision was made which was adverse and against Plaintiff Collins and Collins Chapel Mortuary, Inc., denying application for

reinstating the license of Plaintiff as funeral director and the funeral establishment license of Collins Chapel Mortuary, Inc. as a funeral home.

93. The Arkansas State Board of Embalmers and Funeral Directors has engaged in a course of conduct to deny Plaintiff due process, preventing her from engaging in her employment, conducting her business, and a monetary interest.

94. Although Plaintiff Collins was denied a requested continuance previously, when her license was revoked, the Arkansas State Board of Embalmers and Funeral Directors continued her hearing on March 15, 2011, over Plaintiff's objection, a denial of due process.

95. At the hearing, evidence against Plaintiff Collins consisted of a letter dated January 20, 2009, submitted by Defendant Williams as agent of Defendant, Christian Funeral Home, accusing Collins of misconduct, more particularly described in *Exhibit A*, attached hereto.

96. At the hearing, evidence against Plaintiff Collins consisted of a letter dated April 6, 2011, submitted by Defendant Holifield as agent of Defendant, Cobb Funeral Home, accusing Collins of misconduct, more particularly described in *Exhibit B*, attached hereto.

97. At the hearing, evidence against Plaintiff Collins consisted of a letter dated April 12, 2011, submitted by Defendant Latham as agent of Defendant, Wilson Funeral Home, accusing Collins of misconduct, more particularly described in *Exhibit C*, attached hereto.

98. Evidence at the hearing also consisted of Plaintiff Collins' suspended imposition of sentence for conducting her relative's funeral without a funeral director's license. Collins record has since been expunged. The questions and testimony presented at the hearing were primarily by the male members of the Arkansas State Board of Embalmers and Funeral Directors.

99. The decision made by the Arkansas State Board of Embalmers and Funeral Directors was based entirely upon hearsay evidence.

100. A Board member, Defendant Woodard, recused himself, although he had remained in prior hearings, creating an inference of impropriety and a violation of due process.

101. That Board member, Defendant Camper, failed to recuse himself, although requested, a further violation of due process.

102. Defendant Camper's qualifications to serve had been compromised.

103. That the continuance from the hearing on March 15, 2011 denied Plaintiff due process.

104. That evidence presented at prior hearings, revoking Plaintiff's license, predating the present request were used against Plaintiff, a violation of due process.

105. That the order previously entered was done after the Plaintiff's constitutional rights under the Fourteenth Amendment and the Sixth Amendment were infringed upon and therefore the order should be void.

106. That there is a lack of substantial evidence to support the conclusion of the Arkansas State Board of Embalmers and Funeral Directors denying the reinstatement of

the funeral director's license of Plaintiff and the funeral establishment license of Collins Chapel Mortuary, Inc.

107. The decision of the Arkansas State Board of Embalmers and Funeral Directors was arbitrary and capricious.

108. Defendant Woodard called a special meeting when the administrative person and Defendant Camper were not present.

Comparators

109. Defendant Smith, consumer representative for the Arkansas State Board of Embalmers and Funeral Directors, resigned after Defendant Camper, Pulaski County Coroner and Board Vice-President, accused Smith and Board member Defendant Woodard of "conspiring" to reduce penalties imposed on funeral director Miles Kimble, age 21, of Widener, Arkansas.

110. Defendant Camper alleged Defendant Woodard voted to reverse a December 1, 2009 decision to suspend and fine Miles Kimble for soliciting business from another funeral home because Mr. Kimble served a portion of his apprenticeship under Mr. Woodard.

111. Defendant Smith joined with Defendant Woodard in voting to waive the penalties, but had earlier voted with the majority to fine Miles Kimble.

112. In December 1999, the Board found Miles Kimble guilty of improperly soliciting funeral services from Woodhouse Mortuary in Forrest City, Arkansas. The Board fined him \$1,500.00 and suspended his license for one year for violating A.C.A. §

17-29-311 which prohibits solicitation defining it as pitching bereaved families a certain funeral home to handle services "after death or while death is pending."

113. On January 12, 2010, the Board threw out Miles Kimble's fine and changed his one year license suspension to probation. The Board also threw out a \$5,000.00 fine imposed on Mr. Kimble's employer, Kincaid Funeral Services, which is owned and operated by Beulah Kincaid-Screws.

114. Miles Kimble served an apprenticeship at Woodard Funeral Services in Cross County, Arkansas. Defendant Woodard managed the funeral home.

115. Defendant Camper is quoted as saying, "George Smith and another member of the Board who needs to resign, Terry Woodard, voted to go easy on a funeral director who shouldn't have had the penalties he was assessed waived in a fishy proceeding." Mr. Camper has stated, "You have compromised the integrity of the Board."

14th Amendment Claims

116. The actions of all Defendants deprived Plaintiff of a property right in her profession and her business, and a liberty interest in her reputation in violation of procedural due process.

117. In depriving Plaintiff of a property right in her profession and her business, and a liberty interest in her reputation in violation of procedural due process, all Defendants in their official capacity and as individuals proximately violated Plaintiff's federally protected rights creating liability to her in constitutional tort.

118. That Defendants Camper, Woodard and Clay engaged in a conspiracy designed to deprive Plaintiff of federally protected rights and state property rights. In furtherance of this regrettable and unfortunate objective, they conspired with the remaining members of the Board to suspend Plaintiff's license and further deny reinstatement thereof, and denied her right to continue her business at Collins Chapel Mortuary. As a matter of evidentiary law, the statements and actions of such co-conspirators should be imputed to each other. As a matter of constitutional tort and federal civil rights laws, Defendants herein who engaged in such conspiracy to deprive Plaintiff of federally protected rights are jointly and severally liable to Plaintiff for the damages proximately caused by the aforesaid conspiratorial concerted actions.

PRAYERS FOR RELIEF

119. Plaintiff has sustained violations of her federally protected constitutional rights, has sustained a loss of her right to practice her profession as a funeral director and the right to own and operate a business, Collins Chapel Mortuary, has suffered loss of a liberty interest in her reputation, has been unduly stigmatized, has sustained the ruination of her career as a funeral director, has sustained humiliation and damage to her good name, and has endured horrible pain, suffering, and mental anguish which she will continue to suffer throughout her remaining lifetime. Plaintiff should be awarded compensatory damages against such Defendants in their official capacity and against all such Defendants in their individual capacities, jointly and severally, for all elements of compensatory damages to be set by the jury in its sound discretion which amount is in excess of the minimum required for federal court diversity jurisdiction.

120. Plaintiff herein further avers that the actions taken by Garland Camper, Terry Woodard and Effie Clay in their individual capacities were outrageous, malicious, clearly illegal, and constituted the sort of petty abuse of state power that is reprehensible in a democratic society. Such actions were callous, cruel, and amount to a conscious disregard of plaintiff's rights and feelings so that the legal malice may be inferred. It is thus appropriate that punitive damages be awarded to deter these Defendants and other similarly situated from such action, and Plaintiff asks for an award of punitive damages to be assessed against Garland Camper, Terry Woodard and Effie Clay in an amount to be set by the jury in its discretion against each Defendant but which amount as to each Defendant is in excess of that required for federal court diversity jurisdiction.

121. Plaintiff herein prays that under 42 U.S.C. § 1088 that she recover her legal fees and costs expended in this proceeding made necessary by a violation of her constitutional rights.

122. Plaintiff herein specifically requests a trial by jury.

WHEREFORE, premises considered, Plaintiff Effie Collins prays for judgment against the Arkansas State Board of Embalmers and Funeral Directors, and its named Board of Directors, Dr. George Smith, R.L. Ocker, Eddie L. Hawkins, Jr., Tony Smith, Garland Camper, James "Terry" Woodard, Patricia Roberts, Boyd Heath, and Effie Clay, and Rachael McGrew, individually and in their official capacities, and also individual Defendants, Rodney E. Williams, Laron Jackson, Christian Funeral Directors, Inc., Billy Holifield, Cobb Funeral Home, LaFonce Latham and Wilson Funeral Home, for all

sums of compensatory damages to which she is entitled to be set by the jury in its sound discretion which amount is in excess of that required for federal court diversity jurisdiction; prays for punitive damages against Arkansas State Board of Embalmers and Funeral Directors, and its named Board of Directors, Dr. George Smith, R.L. Ocker, Eddie L. Hawkins, Jr., Tony Smith, Garland Camper, James "Terry" Woodard, Patricia Roberts, Boyd Heath, and Effie Clay, and Rachael McGrew, individually and in their official capacities, and also individual Defendants, Rodney E. Williams, Laron Jackson, Christian Funeral Directors, Inc., Billy Holifield, Cobb Funeral Home, LaFonce Latham and Wilson Funeral Home, in an amount to be set by the jury in its sound discretion which amount is in excess of that required for federal court diversity jurisdiction; prays for attorney's fees and costs pursuant to 42 U.S.C. § 1988; specifically requests a trial by jury; and prays for all other further and proper relief in the premises.

Respectfully submitted,

Larry J. Steele
LARRY J. STEELE PLC
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561
(870) 886-5840
(870) 886-5873 fax
email: steelelaw7622@sbcglobal.net

By: /s/ Larry J. Steele
LARRY J. STEELE (78146)
Attorney for Plaintiff, Effie Collins

January 20, 2009

Arkansas Board of Funeral Directors and Embalmers
101 E. Capitol
Little Rock, Arkansas 72201

Attention Board Members,

Please accept this letter as an official complaint.

This letter is to notify the Arkansas Board of Embalmers and Funeral Directors that Effie Collins, former funeral service licensee, has been, and may still be using my Name in conjunction with my Embalmers License Number to file death certificates in Mississippi County, under an alias Funeral Home Christian Funeral Directors. Christian Funeral Directors is a Tennessee Licensed Establishment According to LaRondette Jackson, the establishment's owner; Effie Collins is not an agent of his company.

On 12/31/2009 at approx. 4:00 PM I was informed by Effie Collins, after questioning her in a face to face meeting, that my name and embalming license number has been used to file several death certificates solely for her benefit. She would not let me know an exact number. I have never embalmed for Effie Collins, Collins Chapel Mortuary, or Christian Funeral Directors nor have I given anyone permission to, or have I been paid by any one for the purpose of affixing my name or license number to any death certificate.

On 1/1/2010 before noon, I contacted Boyd Heath, Inspector for the Arkansas Funeral Board by phone and asked him what steps I needed to take to safeguard my licensure with the Arkansas Board of Embalmers and Funeral Directors after I learned of the unauthorized use of my information. He told me that I needed to contact the prosecuting attorney in and for Mississippi County. I was unable to reach them notified Sgt. Hancock at the Blytheville Police Department of this matter as of 6:19PM on 1/1/2010. He informed me that he will be forwarding this information to a detective there to investigate this matter and follow up with me on 1/02/2010 with further instructions. He did not take a formal report.

I was provided with a copy of 6 death certificates by the Arkansas Health Department after notifying them of my findings. I am continuing to follow the directives of Steve Whisnant, Field Representative for the Arkansas State Department of Health as he is working with Rick Hogan, General Counsel for the Arkansas State Department of Health who will be working with me in resolving this matter.

So far I have not received any cooperation from any one in Mississippi County with assistance in rectifying this matter and I am requesting that the funeral board and the Arkansas Department of Health intervene on my behalf or assist me with what needs to be done to stop her from using my identity fraudulently.

On January 20, 2010 I attempted to contact the Local Registrar in Blytheville to ask her not to process death certificates with my name affixed to them. I was unable to speak with the registrar, but was instructed by an "STD" representative who stated that she was just was just filling in because the registrar

"Exhibit A"

26

was in a meeting that a message was being taken and would be forwarded to them. I have not received a call back from the local registrar.

I contacted the Blytheville Police Department on 01/26/2010 to follow up with them and was informed that I needed to either come there or fax information to 870 762 0425 and the "CID Commander" Assistant Chief Crawford per Louise, the Police Department's Secretary, said "he would be glad to review it".

On January 26, 2010 I spoke with Sarah a representative at Curtis Walker's Deputy Prosecutor for that it would be unethical for their office to prosecute her therefore they cannot prosecute her and that this matter has been forwarded to Mike Walden Prosecutor for the 2nd Judicial District who is assigning this to whoever he deems appropriate. Sarah never let me express my complaint to her.

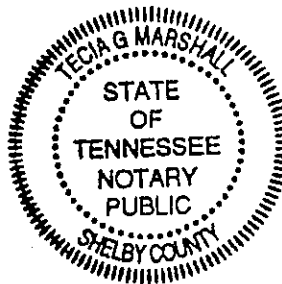
If you have any questions or further instruction for me regarding this matter please contact me at c. (501) 952-4387 or h. (901) 332-4121.

Sincerely

Rodney E. Williams

Cc: Tony Smith, President
Garland Camper, Vice President
Rev. George Smith
Eddie Hawkins
Ronnie Ocker, Sr
Patricia Roberts
James T. Woodard
Rachael F. McGrew, Exec.
Boyd Heath, Inspector
Amy Goode, Adm. Asst

Encl.



My Commission Expires:
November 16, 2013

A handwritten signature in cursive script that reads "Teicia G. Marshall".



Arkansas Board of Funeral
Directors & Embalmers
101 East Capitol
Suite 113
Little Rock, Arkansas 72001

April 6, 2011

Distinguished Officers and staff;

First I would like to commend you for your willingness to serve on a board that is time consuming, filled with difficult challenges and not very popular with the decisions you have to make. However, I feel your decisions are made to the best of your ability and done with much deliberation and thought.

I have recently been informed that Effie Collins, past proprietor of Collins Chapel and Mortuary is asking the board to reinstate her to active status. Having lived in Blytheville for all my life and been a Funeral Director and Manager for the past fifteen years, I naturally want the best for our city in all areas. Unfortunately, I have been aware of the blatant disregard, disrespect, contempt and lack of professional behavior exhibited by Ms. Collins toward the board, its staff, Mississippi County Coroners office and the other funeral homes in the area. I feel as if this would be a travesty to our profession if allowed.

Although I am not a "competitor" of Ms. Collins; my staff, establishment and myself are licensed in all the required areas for us to professionally, legally and caringly respond to those who would put their trust in us. We pay for our dues, licenses' and permits year after year, whether we want to or not. Why? Because it's the right thing to do. It is because of this reason that I am compelled to write this letter. It would be nice if we didn't have to follow any laws, rules or regulations, but we do. Should any individual or company fail to adhere to those laws then they should not be allowed to act in a profession that requires so much honesty, compassion, understanding, ethics and honor. Everyone should be subject to the same requirements, to not be able to do as they wish but rather be subject to the consequences of their actions. It's not like this has been a once or twice mistake.

As always, we will respect your decision and just trust it is in the best interest of this wonderful profession. Thank you for your time and commitment.

Sincerely;

Billy Hollifield
Manager

"Exhibit B"



Cobb Funeral Home, Inc.
603 West Main
P.O. Box 547
Blytheville, AR 72316-0547



WILSON FUNERAL HOME

P.O. Box 337
1323 W. Keiser
Osceola, AR
870-563-2877

1020 S. Division
South Highway 61
Blytheville, AR
870-763-2547

Main Street
P.O. Box 293
Tyronza, AR
870-487-2428

Arkansas State Board of
Embalmers and Funeral Directors
101 East Capitol
Suite 113
Little Rock, Arkansas 72001

April 12, 2011

Dear Board and Staff:

I know you have a very difficult job and have to make some very difficult decisions. I know there are times when those decisions are challenged.

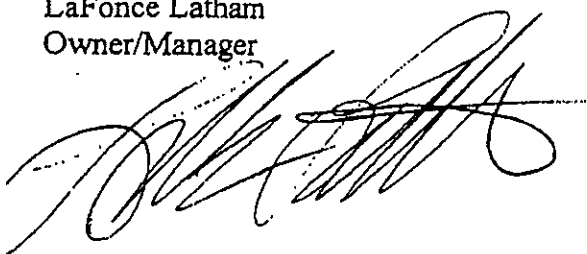
I was informed recently that Effie Collins is asking the board to reinstate her license. I am also aware of her total lack of respect to the state board and its staff along with disrespect to the County Coroners office and other funeral homes in the area.

We have been in business in Blytheville, Osceola and Tyronza for several years. We obey all the laws, rules and regulations to the best of our ability. We pay our dues, we renew our license's and permits every year. We feel Effie Collins has deemed herself above the board by her blatant disrespect for the boards decision. For this reason we are writing this letter to express our concerns. We feel only those of us who are willing to abide by the rules and regulations of our profession should be entitled to a license in our wonderful state.

I want to thank you for your time and we will respect any decision that you make.

Sincerely:

LaFonce Latham
Owner/Manager



"Exhibit C"

29

MAR 06 2013

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

EFFIE COLLINS

CLAIMANT

VS.

CASE NO. 13-0609-CC

ARKANSAS STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

RESPONDENT

MOTION TO DISMISS

COMES NOW the Respondent, the Arkansas State Board of Embalmers and Funeral Directors (the "Board"), and for its Motion to Dismiss the Complaint filed by Claimant Effie Collins ("Claimant" or "Ms. Collins"), states as follows:

1. Ms. Collins filed a Complaint in this matter on February 22, 2013. The entirety of the "Explanation" section of her Complaint reads as follows:

On May 28, 2009, the [Board] revoked the funeral director license of Effie Collins along with the license of Collins Chapel Mortuary, Inc., owned by Effie Collins. On March 5, 2011, the Board denied Effie Collins' request to reinstate her funeral director license and the license of Collins Chapel Mortuary, Inc. The facts are more particularly described in "Exhibit A" attached hereto, a pending action on Effie Collins' behalf in federal court.

Id.

2. This is the fourth forum in which Ms. Collins has attempted to litigate the same claims arising from her discipline by the Board. She has filed several administrative appeals to Arkansas circuit courts and she has twice appealed to the Arkansas Court of Appeals challenging discipline imposed by the Board. In addition, Ms. Collins has also filed a federal civil rights lawsuit, which remains pending, in which she raises the same claims. *See* Complaint, Exhibit A.

3. In this Claims Commission case, Ms. Collins requests compensation of \$3 million for the identical claims set forth in her federal lawsuit against the Board. As explained in detail in the Board's accompanying Brief in Support of Motion to Dismiss, Ms. Collins' Complaint against the Board should be dismissed with prejudice because her claims are barred by absolute immunity, the abstention doctrine, *res judicata* and *collateral estoppel*, and Ms. Collins fails to state a claim for which relief can be granted as a matter of law.

4. Ms. Collins has faced multiple findings of statutory and regulatory violations by the Board, ultimately resulting in the suspension and then revocation of her funeral director license and the revocation of the separate establishment license of her funeral home. The various disciplinary actions against Ms. Collins and her funeral home, including the license suspensions, and the ultimate revocations of those licenses, have all been affirmed on judicial review by Arkansas state courts, including the Arkansas Court of Appeals, when Ms. Collins has chosen to appeal the Board's actions pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.* All of the Board's disciplinary actions against Ms. Collins and her funeral home, and her appeals of those actions, are a matter of public record. For the Commission's convenience, the Board is attaching to its Motion to Dismiss certain documents from the public record of these disciplinary proceedings and appeals as Exhibits "A" through "J." In its accompanying Brief, the Board sets forth in detail the procedural and factual history of these disciplinary proceedings and Ms. Collins' administrative appeals of those proceedings.

5. The Complaint against the Board should be dismissed with prejudice because the Complaint is barred by the doctrine of absolute immunity.

6. The Complaint against the Board should be dismissed with prejudice because the Complaint is barred by the abstention doctrine.

7. The Complaint against the Board should be dismissed with prejudice because the Complaint is barred by the doctrines of *res judicata* and *collateral estoppel*.

8. The Complaint against the Board should be dismissed with prejudice because the Complaint fails to state a claim for which relief can be granted.

9. In support of this Motion, the Board relies upon the Brief being filed contemporaneously herewith, and the following Exhibits attached to this Motion:

- (a) Exhibit A: March 24, 2008 Findings of Fact and Conclusions of Law and Order of the Board;
- (b) Exhibit B: August 22, 2008 Order Affirming Decision of the Board of Embalmers and Funeral Directors, Pulaski County Circuit Court No. CV2008-3787;
- (c) Exhibit C: July 24, 2008 Findings of Fact and Conclusions of Law and Order of the Board;
- (d) Exhibit D: March 26, 2010 Order in Mississippi County Circuit Court No. CV-2008-266-(VIII);
- (e) Exhibit E: June 3, 2009, Findings of Fact, Conclusions of Law and Order of the Board;
- (f) Exhibit F: March 25, 2011 Order in Mississippi County Circuit Court No. CV-2009-272 (RP);
- (g) Exhibit G: May 26, 2011 Findings of Fact, Conclusions of Law, and Order of the Board;
- (h) Exhibit H: February 17, 2011 Judgment in Mississippi County District Court Case No. C-2010-0586; and

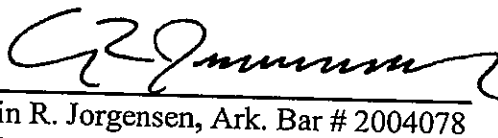
- (i) Exhibit I: November 7, 2012 Order in Mississippi County Case No. CV 2011-144 (BD); and
- (j) Exhibit J: November 14, 2012 Notice of Appeal in Mississippi County Case No. CV 2011-144 (BD).

WHEREFORE, the Board prays that the Complaint against it be dismissed with prejudice, and for all other just and appropriate relief.

Respectfully Submitted,

DUSTIN McDANIEL
Attorney General

By:


Colin R. Jorgensen, Ark. Bar # 2004078
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
(501) 682-3997
colin.jorgensen@arkansasag.gov

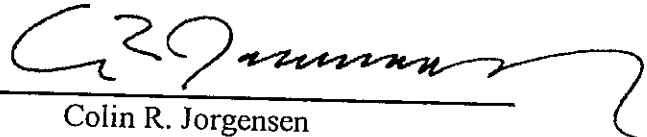
Attorney for the Board.

CERTIFICATE OF SERVICE

I, Colin R. Jorgensen, Assistant Attorney General, do hereby certify that on this 6th day of March, 2013, I have mailed a copy of the foregoing, via First Class U.S. Mail, addressed to the following:

Larry J. Steele
LARRY J. STEELE PLC
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561

Attorney for Effie Collins.


Colin R. Jorgensen

**BEFORE THE ARKANSAS
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

IN THE MATTER OF:

**EFFIE COLLINS, Licensed Funeral Director
and COLLINS MORTUARY CHAPEL,
Blytheville, Arkansas**

FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER

On January 22, 2008 a hearing was held on the above referenced matter by the Arkansas

Board of Embalmers and Funeral Directors (hereinafter the "Board") on a complaint which had been filed with the Board by Mike Adams, State Registrar and Director, Division of Vital Records, Arkansas Department of Health against Collins Mortuary Chapel . The hearing had previously been scheduled for an earlier date and was continued at the request of Attorney Leon Johnson who represents Effie Collins and Collins Chapel Mortuary (hereinafter collectively referred to as "Respondents").

On the date set for a hearing, Attorney Johnson appeared but his client was absent. On behalf of his client, Mr. Johnson moved that the matter be continued. The Board denied the Motion for Continuance. Respondent's attorney presented argument on a previously filed "Motion to Disqualify" board member Ms. Effie Clay from participating in the hearing. The motion was denied.

On the basis of the testimony of Steve Whisnant, Vital Records Field Representative with the Arkansas Department of Health, and other evidence presented the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

F1. Effie Collins and Collins Mortuary Chapel handled the funeral and disposition of the body of Fannie May Jackson whose date of death of May 9, 2007.



F2. As of August 13, 2007, after numerous contacts from the Department of Vital Records of the Arkansas Department of Health as well as contacts from family representatives, the Respondents had not filed a death certificate for Fannie Mae Jackson.

F3. The Respondents actions put a great burden on the deceased's family.

CONCLUSIONS OF LAW

C1. Respondent have violated the Ark. Code Ann. § 17-29-311(a)(9) and (10) and ~~Ark. Code Ann. § 20-18-303 and Ark. Code Ann. § 20-18-601 as well as Rules and Regulations~~ pertaining to Vital Records 6.0.

C2. Effie Collins has failed to carry out her duties as Managing Funeral Director to properly oversee the operation of the funeral home so as to insure the timely filing of the death certificate in this case, and has not done all the things necessary to meet the needs and desires of the arrangers and thus has violated Board Rule XIV, Funeral Service Practices (3).

DISPOSITION

After making the above Findings of Fact and Conclusions of Law, the Board determined that no disposition should be made until the Respondent appeared before the Board. The matter was continued and kept open until March 18, 2008.

On March 18, 2008, Mrs. Collins appeared with her counsel. After hearing statements from Respondent's counsel regarding sanctions, the Board determined that the following sanctions should be imposed:

1. Respondent's license to practice funeral directing is suspended for a period of one year;
2. The funeral establishment is ordered to pay a civil penalty in the amount of \$1,500 dollars within 30 days of the date of this order.

This final action to judicial review pursuant to the Arkansas Administrative Procedures
Act. Ark. Code Ann. § 25-15-201 et seq.

**ARKANSAS BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**

By: 
Rachael F. McGrew, Executive Director

Date: 3/24/08

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16TH DIVISION

EFFIE COLLINS

PETITIONER

VS.

NO. CV2008-3787

FILED 08/22/2008 15:44:10
Pat O'Brien Pulaski Circuit Clerk
024

ARKANSAS BOARD
OF EMBALMERS AND FUNERAL DIRECTORS

RESPONDENT

**ORDER AFFIRMING DECISION OF THE
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

This case comes before the Court on judicial review of a decision of the State Board of Embalmers and Funeral Directors. The Court having considered the briefs, the record of the administrative proceeding, and the arguments of counsel, hereby makes the following decision:

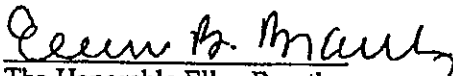
1. The Petitioner acknowledges that she is not appealing the findings of violations made by the Board and that the Court's review is limited to whether the sanctions imposed were arbitrary and capricious.
2. The Court finds the sanctions imposed were not so severe as to render the Board's decision arbitrary and capricious.

THEREFORE, pursuant to Ark. Code Ann. § 25-15-212 the petition for judicial review is denied and the order of the Board is affirmed. Additionally, the Petitioner is



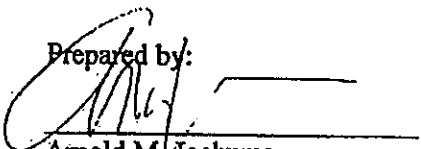
ordered to pay the Board \$267.00 to reimburse the Board for the cost of preparing the administrative record.

IT IS SO ORDERED.


The Honorable Ellen Brantley
Circuit Judge

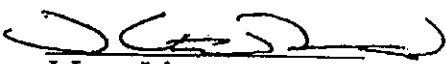
AUG 22 2008
Date

Prepared by:


Arnold M. Jochums
Assistant Attorney General
Attorney for Respondent
Arkansas Board of Embalmers
And Funeral Directors

Judge Ellen B. Brantley
16th Division Circuit Court
Date 8-5-08
Jury Trial ☐
Bench Trial ☒
Non-Trial ☐

Approved as to form:


J. Leon Johnson
Attorney for Petitioner

**BEFORE THE ARKANSAS
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

IN THE MATTER OF:

EFFIE COLLINS, Funeral Director (license suspended)

**and COLLINS CHAPEL MORTUARY,
Blytheville, Arkansas**

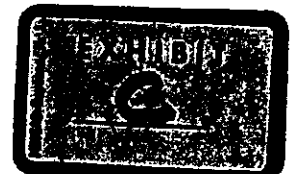
FINDINGS OF FACT AND CONCLUSIONS OF LAW and ORDER

On July 15, 2008 a hearing was held on the above referenced matter by the Arkansas Board of Embalmers and Funeral Directors (hereinafter the "Board") on a complaint of Marshall A. Blair, Chief, Mortuary Affairs Division, Department of the Air Force, ("Mortuary Affairs") against Effie Collins and Collins Chapel Mortuary (hereinafter collectively referred to as "Respondents"). On the basis of the testimony and other evidence presented, the Board makes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

F1. Captain Jeffrey S. Hampton, USAF, died at Barnes Jewish Hospital, St. Louis, Missouri, on November 21, 2007, while assigned to Scott Air Force Base, Illinois.

F2. Funeral services arrangements were handled by Effie Collins, licensed funeral director, and Collins Chapel Mortuary (collectively referred to as "Respondent"). On March 18, 2008 Effie Collins funeral director license was suspended for one year as a result of a complaint brought by the Department of Vital Records of the Arkansas Health Department. She has appealed that suspension but has not obtained a stay. Her current license status is: Suspended.



F3. The body was embalmed in Missouri prior to its transportation by Respondent to respondent's funeral home in Blytheville, Arkansas.

F4. Respondent charged \$22,154.96 for goods and services provided.

F5. Approximately \$10,000 of the funeral bill was paid by the Air Force. In an effort to clarify the Respondent's charges, Mortuary Affairs requested Respondent to provide a copy of their General Price List ("GPL"), Casket Price List ("CPL"), and Outer Burial Container Price List ("OBC"). These were provided after four telephone calls made over a period of two weeks.

F6. Respondent provided the family with a document titled: Funeral Service Contract/Statement. The statement does not contain the date of death or date of the arrangements. The statement is not itemized and lumps together charges for goods and services that are listed separately on Respondent's GPL. The statement does not list cash advances including embalming by another funeral home or mortuary service.

F7. The Statement of Goods and Services Selected does not contain disclosures pertaining to charges for items selected, embalming, or cash advance items required by the Federal Trade Commission's Funeral Practice Rule ("FTC Rule"). Part 453.4(b)(2)(i)(B); part 453.5b and 453.3(f)(2)

F8. The Respondents GPL does not contain the words "General Price List" and does not comply with the FTC Rule in that it does not include the following goods and services:

- a. Forwarding of remains to another funeral home;
- b. Receiving remains from another funeral home;

ARKANSAS STATE
CLAIMS COMMISSION
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- c. Direct cremation;
- d. Immediate burial;
- e. Use of facilities and staff for memorial service;
- f. Hearse;
- g. Either individual casket prices or the range of casket prices that appear on the Casket Price List
- h. Either individual outer burial container prices or the range of outer burial container prices that appear on the Outer Burial Container Price List.

F9 Respondent's OBC does not contain disclaimers required by the FTC rule.

Part 453.3 (c) (2).

F10 Respondents charged \$8,881.50 for an 18 gauge "Air Force Special" casket. The most expensive 18 gauge casket on Respondents CPL is priced \$4,310. The price charged was exorbitant.

F11. The price charged for a Concrete & Metal Vault (Air Force Special) was not supported by Respondents Outer Container Price List.

F12. The proof of allegations in paragraph F12 of the notice of hearing regarding transportation charges were not established.

F13. The Respondents charged \$1,155.00 for family cars. Their GPL shows the charge for a family limousine is \$95.00.

F14. The Respondents response to the allegations of the Mortuary Affairs is two sentences long and does not adequately address the issues raised. The response shows lack of respect for the Air Force and the Board.

CONCLUSIONS OF LAW

C1. Respondent's actions in connection with prices charged in this case constitutes misrepresentation in violation of A.C.A. § 17-29-311(a)(2).

C2. The statement of goods and services selected is not in compliance with Board Rule XII(2) and the Federal Trade Commissions Funeral Practices Rule (hereinafter "FTC Rule") Part 453 et. Seq.

C3. Respondents General Price List is not in compliance with the FTC Rule.

C4. Respondents Outer Burial Container Price list is not in compliance with the FTC Rule.

C5. Respondents numerous violations of state and federal law demonstrate that respondent has become unfit to practice as a funeral director. A.C.A. §§ 17-29-312.

C6. Respondent is guilty of malpractice. A.C.A. §§ 17-29-403.

ORDER

1. The Funeral Director license issued to Effie Collins is suspended for an additional year to begin at the conclusion of a one year suspension imposed in another case.

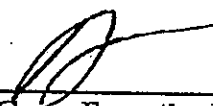
2. The establishment license of Collins Chapel Mortuary is placed on probation for two years.

3. The staff is directed to forward the file to the Federal Trade Commission.

Pursuant to Arkansas Code Annotated § 25-15-212, the Respondents may petition for judicial review of this decision by filing a petition in the Circuit Court in the county in

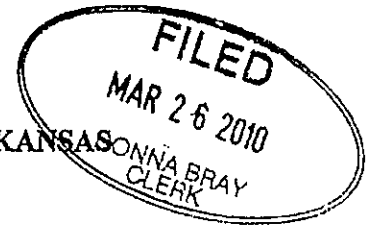
which she resides or does business or in the Circuit Court of Pulaski County, Arkansas
within thirty days after service of this order.

**ARKANSAS BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**

By: 
Rachael F. McGrew, Executive Director

DATE 7/24/08

IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
NORTHERN DISTRICT



**EFFIE COLLINS, FUNERAL DIRECTOR and
COLLINS CHAPEL MORTUARY, INC.**

PETITIONERS

VS.

NO. CV-2008-266-(VIII)

**ARKANSAS BOARD
OF EMBALMERS AND FUNERAL DIRECTORS**

RESPONDENT

ORDER

NOW COMES on the Petition for Judicial Review of Petitioner and the Response of the Arkansas Board of Embalmers & Funeral Directors; and both parties having submitted Briefs and argument; and the Court having the benefit of the transcript of the proceedings before the Arkansas Board of Embalmers & Funeral Directors of July 15, 2008; and from the pleadings filed herein, the Court **DOTH FIND**:

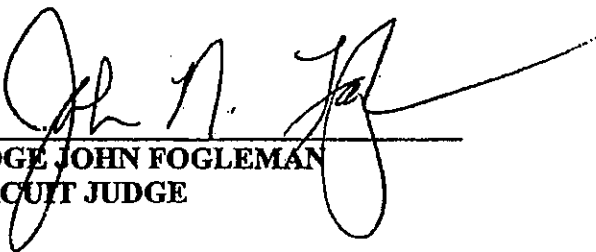
1. That there is substantial evidence to support the conclusions of the Arkansas Board of Embalmers & Funeral Directors, identified as C2, The Statement of Goods and Services Selected is not in Compliance with Board Rule 12(2) and the Federal Trade Commission's Funeral Practices Rule (hereinafter "FTC Rule"), Part 453, et seq.; C3, Respondent's price list is not in compliance with the FTC Rule; C4, Respondent's outer burial container price list is not in compliance with the FTC Rule.
2. The Court further finds there is a lack of substantial evidence to support the findings in C1, Respondent's actions in connection with prices charged in this case constitutes misrepresentation in violation of A.C.A. §17-29-



311(a)(2); and C6, Respondent is guilty of malpractice. A.C.A. §17-29-403.

3. In view of the findings of this Court, this matter is remanded to the Board for action consistent with this decision. The Board may or may not conclude that C5, Respondent's numerous violations of State and Federal law demonstrate that Respondent has become unfit to practice as a funeral director. A.C.A. §17-29-312 is the appropriate finding.
4. In view of the fact that a number of the Board's findings, which supported the penalties imposed, have been found to lack substantial evidence, the Board should reconsider the appropriate penalties to impose in this case. This matter is remanded to the Board of Embalmers & Funeral Directors for action consistent with the findings of the Court and this Order and appropriate penalties in light of the Court's decisions.

IT IS SO ORDERED.



JUDGE JOHN FOGLEMAN
CIRCUIT JUDGE

ENTERED

DISTRIBUTION TO:

Q. Byrum Hurst, Jr.
Arnold M. Jochums

**ARKANSAS STATE
CLAIMS COMMISSION**
MAR 06 2013
RECEIVED

**BEFORE THE ARKANSAS
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

IN THE MATTER OF:

**Elmer Davis, Licensed Funeral Director,
and Effie Y. Collins, an unlicensed person,
Collins Chapel Mortuary, Inc.
Funeral establishment license number 385**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

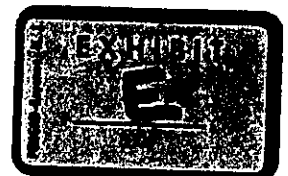
A hearing on the above referenced matter was held before the Arkansas State Board of Embalmers and Funeral Directors ("the board") on May 28th, 200~~8~~⁹ at 101 East Main Street, Little Rock Arkansas. Respondent Elmer Davis, respondent Effie Y. Collins, and respondent Collins Chapel Mortuary, Inc. did not appear at the hearing. On the basis of the testimony and other evidence presented, the Board makes the following Findings of Fact, Conclusions of Law and Order.

FACTUAL ALLEGATIONS

F-1. Charles Ellis Jefferson died on August 4, 2008 at St. Bernard's Hospital in Jonesboro, Arkansas. Mary Stewart, deceased's mother was the beneficiary of a life insurance policy issued by United Heritage Life Insurance Company.

F-2. Mary Stewart, the deceased's mother was in poor health and had given her power of attorney to Diedra Jefferson and Ursula Jefferson, who were the arrangers. Rose Westmoreland, a family friend was asked to help with making the initial funeral arrangements. Mary Stewart is now deceased.

F-3. The family selected Collins Chapel Mortuary to pick up and embalm the body prior to transportation to House of Peoples Funeral Home ("House of People") in Hazlehurst, Mississippi for viewing and burial in Mississippi.



F-4 Collins Chapel Mortuary is owned by Effie Y. Collins whose funeral directors licensed was suspended in April 2008. Elmer Davis is a licensed funeral director and manager of the funeral home in 2008. Diedra Jefferson and Ursula Jefferson ("the complainants") have filed a complaint concerning the handling of this death by Collins Chapel Mortuary.

F-5. Collins Chapel Mortuary informed the family through Mrs. Westmoreland that their charges would be \$3,600. Funeral arrangements were made by Effie Y. Collins. The family was not provided with the funeral home price list or a written statement prior to the rendering of services of price of the service selected and what was included.

F-6 Although the family made many demands they were never provided with a copy of the funeral contract. The price ultimately charged was \$10,000.

F-7. Collins Chapel Mortuary picked up and prepared the body, put it in a casket, and transported it to House of Peoples. The family had not requested or selected a casket and only intended the body to be embalmed and shipped to the receiving funeral home. The Complainants and House of Peoples experienced difficulty contacting Collins Chapel Mortuary concerning the transfer of the body of deceased.

F-8. The Burial-Transit/Cremation and Disinterment Permit was issued to Effie Y. Collin, funeral director.

F-9. On October 8, 2008, Collins Chapel Mortuary faxed an Electronic Proof of Death claim with United Heritage Life Insurance Company ("United Heritage") for \$10,000. The Part A: Funeral Home Claim Statement was signed: "Effie Y. Collins, Funeral Director." The Part B: Assignment was signed: "Effie Y. Collins, Funeral Director."

F-10. On October 8, 2008, Collins Chapel Mortuary faxed an Assignment of Proceeds of Insurance to United Heritage which bore the purported signature of Mary Stewart dated August 6, 2008, and notarized by Effie Y. Collins.

F-11. On October 7, 2008, Rosie Westmoreland brought documents prepared by Collins Chapel Mortuary to Mary Stewart for her signature. Mary Stewart had never been in the funeral home and had not signed any documents related to the funeral prior to October 7, 2008. The signatures of Mary Stewart dated August 6 and August 10, 2008 on documents created by Collins Chapel Mortuary are forgeries.

F-12. In response to a Board subpoena, Respondents provided a Funeral Services Contract/Statement dated August 6, 2008 bearing the purported signature of Mary Stewart and the signature of Elmer Davis. This document was not provided to the family and the signature was a forgery.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board makes the following conclusions of Law.

C-1. Effie Y. Collins acted as a funeral director at a time she was not licensed in violation of Ark. Code. Ann. §17-29-311 (e) and (h).

C-2. Effie Y. Collins has held herself out as a funeral director at a time she was not a licensed funeral director in violation of Ark. Code. Ann. §17-29-311 (e) and (h).

C-3. Elmer Davis, the licensed funeral director, manager of Collins Chapel Mortuary has violated Ark. Code. Ann. §17-29-311 (a) (7) by allowing Effie Y. Collins, who was not a licensed funeral director, to execute contracts for funeral service.

C-4. Elmer Davis, the licensed funeral director, manager of Collins Chapel Mortuary has violated Ann. §17-29-311 (a)(8) and (e) by aiding and abetting Effie Y. Collins, who was not a licensed funeral director, to practice funeral directing and to hold herself out as a funeral director.

C-5. The actions of Effie Y. Collins described in F-5 and F-8, F-9, F-10 and F-11 constitute misrepresentation or fraud in violation of Ark. Code. Ann. §17-29-311 (a) (2).

C-6. Failure to provide price lists prior to the funeral is a violation of Board Rule XIV, Funeral Service Practices, sub-paragraph 10 and the analogous requirements of the Federal Trade Commission, Funeral Industry Practices Rule, Part 453, §453.2(b)(4) General Price List.

C-7. Failure to provide a written statement of the goods and services selected is a violation of Board Rule XII, Disclosure, and the analogous requirements of the Federal Trade Commission, Funeral Industry Practices Rule, Part 453, §453.2(b)(5) Statement of Funeral Goods and Services Selected.


C-8. Elmer Davis, as manager of the Collins Chapel Mortuary, was responsible for the actions of unlicensed personnel of the funeral home. Board Rule IV (2) Funeral Establishment Type A – Full Service Funeral Firms, subparagraph f.

ORDER

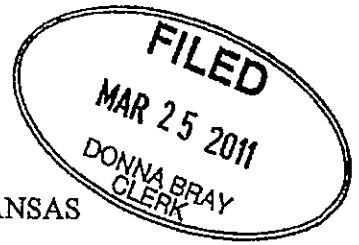
1. The funeral director license issued to Elmer Davis is hereby revoked.
2. The funeral director license issued to Effie Y. Collins is hereby revoked.
3. The establishment license issued to Collins Chapel Mortuary, Inc. is revoked.
4. Elmer Davis and Effie Y. Collins are directed to return licenses issued to each of them to the Board office within ten days of receipt of this order.

Pursuant to Ark. Code Ann. §25-15-212, respondents may petition for judicial review of this decision by filing petition in the Circuit Court in the county they reside or do business or in the Circuit Court of Pulaski County within thirty days after service of this order.

**ARKANSAS BOARD OF EMBALMERS
AND FUNERAL DIRECTORS**

By: 
Rachael F. McGrew, Executive Director

Date: 6/3/09



IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
NORTHERN DISTRICT

EFFIE COLLINS, FUNERAL DIRECTOR and
COLLINS CHAPEL MORTUARY, INC.

PETITIONERS

VS.

CASE NO. CV-2009-272 (RP)

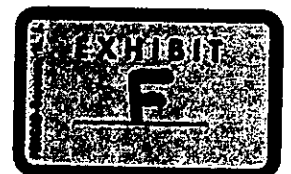
ARKANSAS BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

RESPONDENT

ORDER AFFIRMING DECISION OF THE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

This case comes before the Court for judicial review of the decision of the Arkansas State Board of Embalmers and Funeral Directors ("Board"), which revoked the funeral director license of Effie Collins and revoked the establishment license of the Collins Mortuary Chapel. Having reviewed the record and considered the briefs submitted by the parties, the Court makes the following decision.

1. Effie Collins and Collins Mortuary Chapel, Inc., the Petitioners, seek judicial review of a June 3, 2009 decision of the Board which found that petitioner Collins acted as a funeral director and held herself out as a funeral director while her license was suspended; that several of her actions with regard to funeral services provided for Charles Ellis Jefferson constituted misrepresentation or fraud; and that petitioner failed to provide a required price list and a statement of services of goods selected prior to the funeral as required by state and Federal law.



2. The Court finds that there was substantial evidence of record to support the Board's findings and its conclusions of law. The Court also finds that the Board's decision was not arbitrary, capricious, characterized by an abuse of discretion, or contrary to law.

3. Pursuant to Ark. Code Ann. §25-15-212(d)(2) the Board is entitled to be reimbursed for its costs of preparing the Administrative Record in the amount of \$383.00.

Therefore, it is the Order of the Court that the decision of the Arkansas Board of Embalmers and Funeral Directors against Effie Collins and Collins Chapel Mortuary, Inc. be affirmed and petitioners are also ordered to pay the costs of preparation of the record on appeal in the amount of \$383.00.

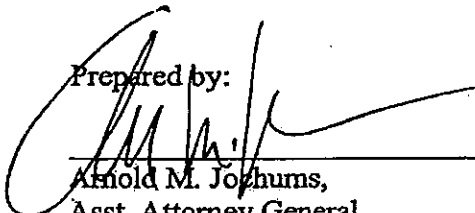
IT IS SO ORDERED.



HON. RANDY PHILHOURS
CIRCUIT JUDGE

Date March 16, 2011

Prepared by:



Arnold M. Jophums,
Asst. Attorney General
Attorney for the Board

Approved as to form:

Q. Bynum Hurst, Jr.
Attorney for Effie Collins and
Collins Chapel Mortuary, Inc.

**BEFORE THE ARKANSAS
BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

IN THE MATTER OF:

**EFFIE COLLINS, APPLICANT FOR FUNERAL DIRECTOR'S LICENSE
AND
COLLINS CHAPEL MORTUARY, APPLICANT FOR FUNERAL
ESTABLISHMENT LICENSE**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing on the above-referenced matter was held before the Arkansas State Board of Embalmers and Funeral Directors ("the Board") on May 24, 2011, at 323 Center Street, Little Rock, Arkansas. Effie Collins (hereinafter referred to as "the Applicant") appear with her attorney Larry J. Steele.

Prior to the hearing the Applicant separate motions for the recusal of Board members Terry Woodard and Garland Camper. Terry Woodard did not participate in the hearing. The hearing officer ruled that Garland Camper was not disqualified from hearing the matter before the Board.

On the basis of the testimony and other evidence presented, the Board makes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

- F1. Applicant Collins has previously been licensed as a funeral director and Collins Chapel Mortuary has previously held a funeral service establishment license.
- F2. Applicant's Funeral Director license was suspended for one year in April 2008 and Applicant was ordered to pay a \$1,500 civil penalty. The Board's decision was affirmed by the Pulaski County Circuit Court and Collins was ordered to pay the board \$267 for the cost of preparing the administrative record. On appeal, the Arkansas Court of



Appeals affirmed the Boards findings. (CA 08-1227). The civil penalty and court costs were paid on the morning of the hearing.

F2. Applicant's funeral director license was suspended for a second year beginning on April 2, 2009. On appeal, the Circuit Court of Mississippi County found that there was substantial evidence to support the Board's findings that Collins' Statement of Goods and Services Selected was not in Compliance with Board Rule 12(2) and the Federal Trade Commission's Funeral Practices Rule, Part 453, and that Collin's price list and outer burial container price were not in compliance with the FTC Rule. The Court found several findings were not supported by substantial evidence and remanded the matter to the Board to reconsider sanctions.

F3. During the time her license was suspended Effie Collins signed Death Certificates, signed insurance assignments and signed Statement of Funeral Goods and Services.

F4. On May 28, 2009, the Board revoked Effie Collins' funeral director license and the establishment license of Collins Chapel Mortuary. The Circuit Court of Mississippi County affirmed this decision on March 16, 2011 and ordered Collins to reimburse the Board for the cost of preparing the administrative record in the amount of \$383.00.

F5. On September 9, 2009, Board Inspector Boyd Heath and Captain Larry Robinson, Mississippi County Sheriff's Office, observed funerals and graveside services being conducted by Collins Chapel Mortuary and Effie Collins.

F6. The Board received numerous complaints from Funeral Director's that Applicant was acting as a funeral director after her funeral director's license was revoked.

Obituaries from the Blytheville Courtier showed that Collins Chapel Mortuary provided funeral services after the establishment license had been revoked.

F7. The Board referred these violations of A.C.A. §§ 17-29-401 to the prosecuting attorney.

F8. On February 17, 2011, Applicant Collins entered a nolo contendere plea to operating a funeral home without a license.

F9. Rodney Williams, an embalmer, reported to the Board and the Arkansas Department of Health that Effie Collins had listed his name on death certificates as having embalmed the deceased although he had in fact not embalmed the body.

CONCLUSIONS OF LAW

C1. The applicant's request to be licensed as Funeral Director should be denied.

C2. The applicant's request to issue an Establishment License to Collins Chapel Mortuary should be denied.

IT IS SO ORDERED:

Pursuant to Arkansas Code Annotated § 25-15-212, the Applicant may petition for judicial review of this decision by filing a petition in the Circuit Court in the county in which he resides or does business or in the Circuit Court of Pulaski County within thirty days after service of this Order.

ARKANSAS BOARD OF EMBALMERS AND FUNERAL DIRECTORS

By: 
Rachael McGrew, Executive Director
Date: 3/26/11

IN THE DISTRICT COURT OF MISSISSIPPI COUNTY, ARKANSAS

STATE OF ARKANSAS

VS.

EFFIE COLLINS

NO. C-2010-05896

FILED
PLAINTIFF
FEB 17 2011

MISS. CO., AR (BLY.)
CHICKASAWBA DISTRICT
DISTRICT COURT CLERK

BY _____

JUDGMENT

On Feb. 17, 2011, the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

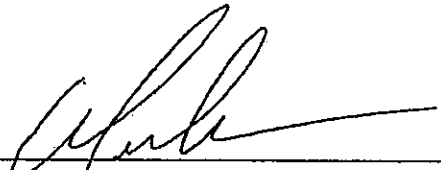
Defendant's full name:	Effie Collins
Date of birth:	9/10/1957
Race:	African American
Sex:	Female
SID#:	NA
Defendant's attorney:	Larry J. Steele
Deputy prosecuting attorney:	Curt Huckaby

The Defendant was charged with one count of operating a funeral home without a license, ACA 17-29-305, a Class A misdemeanor, by providing services for Steve Evans on or about July 19, 2010, to which the Defendant enters a plea of nolo contendere. The Court hereby accepts the plea of the Defendant and suspends imposition of sentence (SIS) for a period of one (1) year and assesses court costs of \$140.00; no fine or jail time is required.



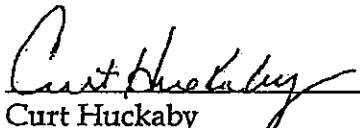
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The conditions of the SIS are that Defendant shall not engage in the State of Arkansas the operation of a funeral home or act as a funeral director for a period of one (1) year without first obtaining appropriate licensing from the State of Arkansas. - -

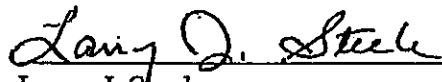


District Judge

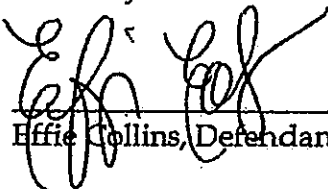
APPROVED:



Curt Huckaby
Deputy Prosecuting Attorney



Larry J. Steele
Attorney for Defendant



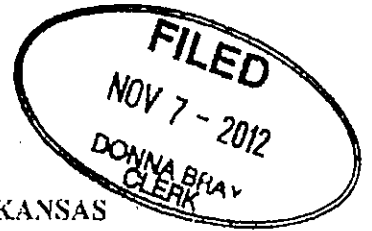
Effie Collins, Defendant

FILED

FEB 17 2011

MISS. CO., AR (BLY.)
CHICKASAWBA DISTRICT
DISTRICT COURT CLERK

BY _____



IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
CHICKASAWBA DISTRICT

EFFIE COLLINS, ET AL.

PETITIONERS

v.

NO. CV 2011-144 (BD)

ARKANSAS STATE BOARD OF
EMBALMERS AND FUNERAL
DIRECTORS

RESPONDENT

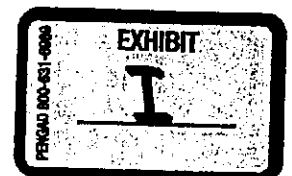
ORDER

Before the Court is the petition for judicial review of Effie Collins and Collins Chapel Mortuary from the May 26, 2011 Findings of Fact, Conclusions of Law, and Order issued by respondent Arkansas State Board of Embalmers and Funeral Directors. By that order, the respondent (1) denied the application of petitioner Effie Collins for licensure as a funeral director and (2) denied the application of petitioner Collins Chapel Mortuary for licensure as a funeral establishment.

On Monday, October 22, 2012, the Court heard oral arguments on the petition. The petitioners appeared in person and through counsel. The respondent appeared through counsel.

Having reviewed the administrative record, the briefs submitted by the parties, and having heard the oral arguments presented by the parties, the Court makes the following findings:

1. Substantial evidence is included in the administrative record to support the Board's Findings of Fact, Conclusions of Law, and Order;
2. The Board's decision, including its denial of the licensure applications of Effie Collins and Collins Chapel Mortuary, was not arbitrary and capricious;

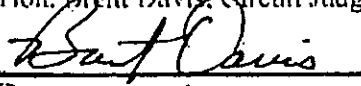


3. The petitioners' argument that the Board's decision was the product of sex discrimination was not presented to the Board and is therefore not properly before the Court. That argument for reversal is therefore denied;
4. The petitioners' argument that Board member Garland Camper's refusal to recuse himself was in violation of the petitioners' due process rights is unfounded and therefore denied. The Court is satisfied from Mr. Camper's explanation in the administrative record of why he refused to recuse himself that his decision was proper;
5. The petitioners' objection to the Board's reliance on hearsay evidence is overruled. Hearsay evidence is permissible in administrative proceedings, and the administrative record also contained a significant amount of direct evidence to support the Board's order.

For the reasons set forth in this order, the May 26, 2011 Findings of Fact, Conclusions of Law, and Order issued by respondent Arkansas State Board of Embalmers and Funeral Directors is AFFIRMED. The petition for judicial review is DENIED and DISMISSED.

IT IS SO ORDERED.

Hon. Brent Davis, Circuit Judge


Date November 1, 2012

Prepared by:
Mark N. Ohrenberger
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201


Attorney for Respondent

Approved as to Form:
Larry J. Steele
Attorney at Law
115 Abbey, P.O. Box 561
Walnut Ridge, Arkansas 72476


Attorney for Petitioners

IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
CIVIL DIVISION

EFFIE COLLINS
and COLLINS CHAPEL MORTUARY, INC.

VS.

NO. CV-2011-144 (BD)

ARKANSAS BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

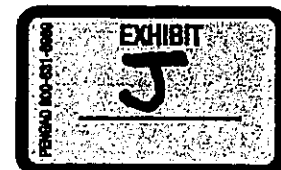
RESPONDENT

FILED
NOV 16 2012 4:00 AM
DONNA BRAY PETITIONERS
CLERK

NOTICE OF APPEAL

Notice is hereby given that Effie Collins and Collins Chapel Mortuary, Inc., Appellants, appeal to the Arkansas Supreme Court from the Order of the Honorable Brent Davis, which was entered November 1, 2012 and filed November 7, 2012 denying Appellants' Petition for Judicial Review. Said Petition requested a review of the May 26, 2011 Findings of Fact, Conclusions of Law and Order issued by the Arkansas State Board of Embalmers and Funeral Directors, denying the application of petitioner, Effie Collins, for licensure as a funeral director, and denying the application of Collins Chapel Mortuary, Inc. for licensure as a funeral establishment.

Arrangements have been made for preparing the record for certification.




60

Respectfully submitted,

Larry J. Steele
LARRY J. STEELE PLC
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561
(870) 886-3840
(870) 886-3873 fax
email: stealelaw7622@sbcglobal.net

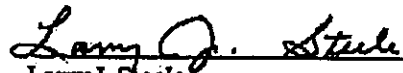
By:


LARRY J. STEELE (78146)
Attorney for Appellants, Effie Collins
and Collins Chapel Mortuary, Inc.

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that a copy of the foregoing was served on the following attorney of record, via U.S. mail, postage prepaid this 14th day of November, 2012;

Mr. Mark N. Ohrenberger
Assistant Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201


Larry J. Steele

APR 09 2013

RECEIVED

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

EFFIE COLLINS

CLAIMANT

VS.

CASE NO. 13-0609-CC

ARKANSAS STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

RESPONDENT

**CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS**

Comes Claimant, Effie Collins ("Claimant" or "Collins"), by and through her attorney, Larry J. Steele, and for her Response to Respondent's Motion to Dismiss, states:

1. Respondent has filed a motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(6), Ark. Code Ann. § 19-10-204(b)(3)(A), absolute immunity, the abstention doctrine, res judicata and collateral estoppel.
2. Claimant's Complaint alleges malice, outrage, and facts stating a claim for relief based on sex discrimination, a violation of due process, and equal protection pursuant to the Fourteenth Amendment to the United States Constitution, in ordinary and concise language showing she is entitled to relief and a demand for relief sufficient to overcome a Rule 12(b)(6) motion. (See Exhibit A)
3. Claimant Collins has followed administrative procedure on previous actions by the Arkansas State Board of Embalmers and Funeral Directors ("Board"), the suspension and revocation of her license as a funeral director and the license of her business establishment, Collins Chapel Mortuary, but has not completed administrative procedure on the Board's failure to reinstate her licenses. At no time were specific

issues of sex discrimination and due process addressed by the Board; the Board's suspension and subsequent revocation of Ms. Collins' licenses constitutes the basis for her claims of sexual discrimination. Claimant Collins' comparators are fully described in her Complaint and brief filed herewith.

4. A block of the Board, consisting of Garland Camper ("Camper"), Terry Woodard ("Woodard") and Effie Clay ("Clay"), emerged whereby such block engaged in a calculating and intentional course of conduct to deprive Ms. Collins of a license as an Arkansas state licensed funeral director and a license to operate Collins Chapel Mortuary, Inc. and deprive her of her federally protected rights of due process, equal protection pursuant to the Fourteenth Amendment to the United States Constitution, property rights, and discrimination based on her sex, female. Mr. Camper would subsequently be asked to resign his position as Pulaski County Coroner by County Judge Buddy Villines. Mr. Camper in turn would file his own lawsuit (*See Exhibit "E"*) with Judge Villines and Pulaski County filing a detailed Answer. (*See Exhibit "F"*) Mr. Woodard was a former romantic interest of Claimant, and Ms. Clay was a friend of Mr. Woodard's who did not approve of Collins' and Woodard's relationship. Mr. Camper's total disregard and disdain for women was expressed by having sex in his morgue.

5. The male dominated Board, for various reasons, was determined to deprive Claimant Collins of means of support and ability to earn an income by depriving her of her funeral director's license and the license of her business establishment, Collins Chapel Mortuary.

6. The Board denied Claimant Collins' request to have her funeral director's license reinstated, two years after being suspended and revoked. The Board denied reinstatement based primarily on the same facts it premised its suspension two years earlier.

7. Claimant Collins' accompanying Brief will fully explain the basis of her claims of malicious sex discrimination by the Board's conduct toward her.

8. The conduct of the Board was malicious and was a conscious and wrongful act to Claimant Collins, a violation of law beyond the bounds of human decency.

9. In support of her Response to Respondent's Motion to Dismiss, Claimant relies on the following pleadings and documents:

- (A) Complaint herein
- (B) Motion to Disqualify
- (C) Motion for the Recusal of Board Member Terry Woodard
- (D) Motion for the Recusal of Board Member Garland Camper
- (E) Complaint (*Garland Camper v. F.G. "Buddy" Villines, et al.*)
- (F) Answer (*Garland Camper v. F.G. "Buddy" Villines, et al.*)
- (G) Letter of Garland Camper to F.G. Villines, dated April 11, 2011
- (H) Related article of interest reporting Garland Camper's resignation
- (I) Order of Judge John Fogleman, Mississippi County Circuit Court, remanding the matter to the Board for action consistent with his findings, filed March 26, 2010

- (J) Arkansas Board of Embalmers and Funeral Directors, Findings of Fact, Conclusions of Law, and Order, dated May 26, 2011
- (K) Administrative Record from March 15, 2011 and May 24, 2011 hearings
- (L) 2008 tax returns
- (M) 2009 tax returns
- (N) Arkansas Court of Appeals Abstract, Appellant's Brief and Addendum

Respectfully submitted,

LARRY J. STEELE PLC

By:



LARRY J. STEELE (78146)

115 Abbey Road

P.O. Box 561

Walnut Ridge, AR 72476-0561

(870) 886-5840

(870) 886-5873 fax

email: steelelaw7622@sbcglobal.net

Attorney for Claimant, Effie Collins

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that I have mailed a copy of the foregoing CLAIMANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS, by U.S. Mail, postage prepaid, this 8th day of April, 2013, to the following:

Mr. Collin R. Jorgensen
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201



LARRY J. STEELE

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 3,000,000.00

Claim No. 13-0609-CC

<u>Effie Collins</u>	<u>Claimant</u>	<u>Attorneys</u>	<u>Larry Steele, Attorney</u>	<u>Claimant</u>
vs.				
<u>AR Board of Embalmers & Funeral Directors</u>	<u>Respondent</u>	<u>Colin Jorgensen, Asst. Attorney General</u>	<u>Respondent</u>	
<u>State of Arkansas</u>				
<u>Date Filed</u>	<u>February 22, 2013</u>	<u>Type of Claim</u>	<u>Loss of Wages+</u>	

FINDING OF FACTS

The Claims Commission hereby unanimously changes the Respondent's "Motion to Dismiss" to a "Motion to Hold in Abeyance," and unanimously grants the "Motion to Hold in Abeyance," until notified of the conclusion of all federal and state actions. Therefore, this claim will be held in abeyance.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously changes the Respondent's "Motion to Dismiss" to a "Motion to Hold in Abeyance," and unanimously grants the "Motion to Hold in Abeyance," until notified of the conclusion of all federal and state actions. Therefore, this claim will be held in abeyance.

Date of Hearing April 11, 2013

Date of Disposition April 11, 2013

<u>[Signature]</u>	<u>Chairman</u>
<u>[Signature]</u>	<u>Commissioner</u>
<u>[Signature]</u>	<u>Commissioner</u>

66

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Arkansas
State Claims Commission
NOV 14 2013

EFFIE COLLINS

RECEIVED
CLAIMANT

VS.

CASE NO. 13-0609-CC

ARKANSAS STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

RESPONDENT

RENEWED MOTION TO DISMISS

COMES NOW the Respondent, the Arkansas State Board of Embalmers and Funeral Directors (the "Board"), and offers the following Renewed Motion to Dismiss the Complaint filed by Claimant Effie Collins ("Claimant" or "Ms. Collins").

1. As explained in the Board's Motion to Dismiss and Brief and Exhibits A – J, filed on March 6, 2013, the Complaint filed by Ms. Collins should be dismissed with prejudice because her claims against the Board are barred by absolute immunity, the abstention doctrine, and *res judicata* and *collateral estoppel*, and because Ms. Collins fails to state a claim for which relief can be granted as a matter of law. Absolute immunity, the abstention doctrine, and *res judicata* and *collateral estoppel* bar Ms. Collins' claims against the Board as a matter of law even assuming every fact alleged by Ms. Collins is true and even assuming she otherwise states a valid claim against the Board.

2. The Board hereby incorporates by reference pursuant to Ark. R. Civ. P. 10(c) its Motion to Dismiss, Brief, and Exhibits A – J filed on March 6, 2013.

3. On April 11, 2013, the Commission issued an Opinion in which it converted the Board's Motion to Dismiss into a "Motion to Hold in Abeyance," and unanimously granted the Motion to Hold in Abeyance "until notified of the conclusion of all federal and state actions."

The Board now renews its Motion to Dismiss and hereby notifies the Commission that all federal and state actions have concluded.

4. Ms. Collins' identical lawsuit filed in federal court has been dismissed with prejudice by the federal court. Attached to this Renewed Motion to Dismiss as Exhibits "K" and "L" are the federal district court's Order and Judgment dismissing Ms. Collins' federal complaint on May 31, 2013. Ms. Collins has not filed a notice of appeal of the federal district court's dismissal of her complaint, and her deadline to appeal has passed. The federal district court's Order and Judgment (Exhibits K and L) are therefore final.

5. Ms. Collins' final administrative appeal has also concluded. As explained in the Board's Motion to Dismiss and Exhibits, the Mississippi County Circuit Court entered an order on November 7, 2012 in which it affirmed the Board's findings of fact, conclusions of law, and order denying the licensure applications of Ms. Collins and Collins Chapel Mortuary (Board's Exhibit I), and Ms. Collins appealed that decision to the Arkansas Court of Appeals (Board's Exhibit J). On November 13, 2013, the Arkansas Court of Appeals issued an opinion affirming the Board's denial of Ms. Collins' application for reinstatement of her licenses. Attached to this Renewed Motion to Dismiss as Exhibit "M" is the Arkansas Court of Appeals opinion, 2013 Ark. App. 678.

6. In its 15-page Order dismissing Ms. Collins' complaint (which is identical to her complaint before the Commission in this case), the federal district court concluded "that the requisites for absolute immunity are met in this case" and therefore dismissed Ms. Collins' complaint against the Board members. Exhibit K, p. 13. The federal court explained:

Agency officials who perform quasi-judicial functions may be entitled to absolute immunity with respect to claims against them in their individual capacities. *See Dunham v. Wadley*, 195 F.3d 1007, 1010 (8th Cir. 1999) (finding veterinary licensing board

members who perform quasi-judicial functions entitled to absolute immunity). Absolute immunity is appropriate when the official's responsibilities and functions are similar to those involved in the judicial process, the official's actions are likely to result in lawsuits for damages by disappointed parties, and sufficient safeguards exist in the regulatory framework to control unconstitutional conduct. *See Dunham*, 195 F.3d at 1010 (citations omitted).

The Court finds that the requisites for absolute immunity are met in this case. Arkansas law authorizes the Board to suspend or revoke licenses of funeral directors and embalmers, *see* Ark. Code Ann. § 17-29-311, and to revoke establishment licenses for violations of state licensing law. *See* Ark. Code Ann. § 17-29-307. The Board also has the power to impose a civil penalty not to exceed \$10,000 on persons who violate the statutes and rules governing funeral directors. *See* Ark. Code Ann. § 17-29-403. The Board's functions are unquestionably judicial in nature, and its decisions and actions are likely to result in lawsuits for damages by disappointed parties such as Collins. Furthermore, Arkansas law provides sufficient safeguards to control unconstitutional conduct by Board members. Pursuant to the Arkansas Administrative Procedures Act, a state court may reverse a Board decision if the agency's findings or decisions lack evidentiary support, violate constitutional or statutory provisions, exceed agency authority, result from unlawful procedure, or are arbitrary, capricious, or an abuse of discretion. *See Collins v. Arkansas Bd. of Embalmers and Funeral Directors*, 2009 Ark. App. 498, 2-3, 324 S.W.3d 716, 718 (2009)(citing *Arkansas Bd. of Embalmers and Funeral Directors v. Reddick*, 366 Ark. 89, 92-93, 233 S.W.3d 639, 642-43 (2006)(citing Ark. Code Ann. § 25-15-212(h)).

Collins charges that Board members violated her constitutional rights in the course of performing official duties that are judicial in nature, and she fails to allege facts demonstrating the Board members acted in complete absence of all jurisdiction. Accordingly, the Court finds that the Board members are entitled to absolute immunity and that Collins' individual-capacity claims must be dismissed with prejudice.

Exhibit K, p. 13-14 (emphasis added). The federal district court also declined to entertain Ms. Collins' official-capacity claims against the Board and its members under the abstention doctrine, because Ms. Collins has an available avenue of relief through administrative appeals to

Arkansas state court. *See id.*, p. 11-13. Accordingly, under the abstention doctrine and the doctrine of absolute immunity, Ms. Collins' federal complaint against the Board was dismissed in its entirety by the federal court, for reasons other than sovereign immunity. Because the Complaint filed in the instant case is identical to the complaint filed in the federal case, the Commission should likewise dismiss Ms. Collins' Complaint because it is barred by the doctrine of absolute immunity. *See Board's Brief in support of Motion to Dismiss*, p. 11-14.

7. In its 8-page opinion affirming the Board's denial of Ms. Collins' applications to have her licenses reinstated, the Arkansas Court of Appeals concluded that "none of the contentions presented by [Ms. Collins] in this matter are persuasive, and on this record we hold that the Board's decision was supported by substantial evidence." Exhibit M, 2013 Ark. App. 678, *8. Following a discussion of the "lengthy procedural history of this case," (*id.*, *3), the Court of Appeals noted that at the hearing on Ms. Collins' request for reinstatement of her licenses, evidence established that Ms. Collins acted as a funeral director after her license had been revoked, supporting the Board's denial of her request for reinstatement. *Id.*, *4-5. The Court of Appeals summarized Ms. Collins' arguments on appeal as follows:

On appeal, Ms. Collins and Collins Chapel contend that the Board's actions were an abuse of power and based on a petty grievance with an agenda to harm Ms. Collins. The appellants particularly take issue with Board members Effie Clay, Terry Woodard, and Garland Camper, arguing that these members poisoned the proceedings and were biased against Ms. Collins, engaging in an intentional course of conduct to deprive her of a license as a funeral director. The appellants also argue that the Board's decision was based entirely on hearsay evidence, that she was denied due process and equal protection as guaranteed by the United States Constitution, and that she was a victim of sex discrimination. The appellants further note that Ms. Collins' criminal record for operating a funeral home without a license was expunged in March 2012, and they assign error to the Board's consideration of its prior orders of suspension and revocation and the findings contained therein. The appellants also dedicate a

considerable portion of their brief to challenging the Board's suspension of Ms. Collins' license in April 2008. The appellants argue that the Board's denial of their request for reinstatement was unsupported by substantial evidence and was arbitrary and capricious, and therefore that the Board's decision should be reversed.

Id., *5-6. The arguments asserted by Ms. Collins in her final administrative appeal, *supra*, are identical to the arguments asserted by Ms. Collins in the instant case (and identical to the arguments asserted by Ms. Collins in her federal lawsuit, which was dismissed with prejudice by the federal district court, *supra*). The Court of Appeals concluded that Ms. Collins' arguments all fail on the merits, and affirmed the Board's denial of her requests for reinstatement:

Contrary to the appellants' argument, in reaching its decision in this case as to whether to reinstate appellants' license, it was relevant for the Board to consider the previous infractions against appellants resulting in their licensure suspensions and revocations. The record demonstrates that beginning in May 2007, the appellants engaged in a systematic course of committing violations, resulting in suspensions, probation, and ultimately revocation of their funeral-director and funeral-establishment licenses. Although appellants argue on appeal that Ms. Collins' initial suspension in April 2008 was improper, that suspension was affirmed in a prior appeal to this court, and this argument is now barred by res judicata. See *City of Fayetteville v. Fayetteville Sch. Dist. No. 1*, 2013 Ark. 71, ___ S.W.3d ___ (res judicata precludes relitigation of a cause of action). The record shows that after the suspension Ms. Collins's and Collins Chapel's licenses were revoked for providing funeral services without a license, and in the hearing on appellants' requests for reinstatement evidence was presented showing that even after their licenses were revoked the appellants continued to conduct funerals in violation of our statutes. In light of the pattern of violations and the appellants' complete and intentional disregard of the Board's prior orders of suspension and revocation, we have no hesitation in holding that the Board's denial of appellants' requests for licensure reinstatement was supported by substantial evidence and was not an arbitrary or capricious decision.

Although the appellants also argue on appeal that their constitutional rights were violated, most of these arguments,

including Ms. Collins' claim that she was a victim of sex discrimination, were not made to the Board and thus are not preserved for review. *See Ark. Bd. of Exam'rs in Counseling v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1988) (It is essential to review under the Administrative Procedure Act that issues must be raised before the administrative agency appealed from or they will not be addressed by the appellate court). **Moreover, there is nothing in the record to demonstrate any constitutional violations.** Ms. Collins did file a motion below for Board member Garland Camper to recuse, noting that he had previously resigned as Pulaski County Coroner and arguing that due process required that he recuse or be removed from the Arkansas State Board of Embalmers and Funeral Directors. However, employment as a county coroner is not among the requirements for any Board position, *see Ark. Code Ann. § 17-29-201*, and there was no evidence presented showing that Mr. Camper was unqualified to serve on the Board or biased against Ms. Collins. Although appellants also challenge on appeal the presence of Mr. Woodard and Ms. Clay as members of the Board, the record shows that Mr. Woodard recused himself from these proceedings, and there is nothing in the record showing that appellants asked Ms. Clay to recuse. Furthermore, there was no evidence presented to indicate that any Board member was biased against Ms. Collins as appellants now suggest. Finally, as to appellants' argument that the Board's decision was entirely based on hearsay, we observe that the Board heard direct testimony at the hearing that appellants were conducting a funeral without a license. Moreover, we have held that hearsay is normally admissible in administrative proceedings if it is reliable and probative. *Ark. State Bd. of Nursing v. Long*, 8 Ark. App. 288, 651 S.W.2d 109 (1983).

We conclude that none of the contentions presented by the appellants in this appeal are persuasive, and on this record we hold that the Board's decision was supported by substantial evidence. Therefore, we affirm the decision of the Board.

Id., *6-8 (emphasis added; footnote omitted). In short, in her final administrative appeal, Ms. Collins raised all of the same arguments that she has raised in the instant case before the Commission, and each argument was addressed and rejected by the Arkansas Court of Appeals. The Commission should also reject Ms. Collins' claims, and dismiss her Complaint with prejudice.

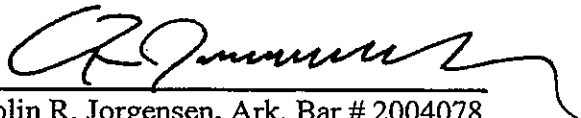
8. Ms. Collins' Complaint against the Board in this Claims Commission case should be dismissed without delay, for the same reasons her federal complaint was dismissed by the federal court: because the Complaint is barred by the abstention doctrine and the doctrine of absolute immunity. The Board raised these grounds for dismissal in its initial Motion to Dismiss and reasserts these grounds now that the federal case has concluded. As explained in the Board's Motion to Dismiss and as determined by the Arkansas Court of Appeals, the Complaint is also barred by the doctrines of *res judicata* and *collateral estoppel*, and Ms. Collins' failure to state a claim for which relief can be granted as a matter of law. Of course, the Commission need not reach the merits of these additional arguments for dismissal, because as the federal court specifically concluded, the Complaint is barred in its entirety by the abstention doctrine and the doctrine of absolute immunity. The Complaint filed by Ms. Collins should be dismissed with prejudice because her claims against the Board are barred by absolute immunity, the abstention doctrine, and *res judicata* and *collateral estoppel*, and because Ms. Collins fails to state a claim for which relief can be granted as a matter of law. See Ark. Code Ann. § 19-10-204(b)(3)(A) (The Arkansas State Claims Commission "shall make no reward for any claim which, as a matter of law, would be dismissed from a court of law or equity for reasons other than sovereign immunity."); Ark. Code Ann. § 19-10-205(b)(3)(B) ("Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.").

WHEREFORE, the Board prays that the Complaint against it be dismissed with prejudice, and for all other just and appropriate relief.

Respectfully Submitted,

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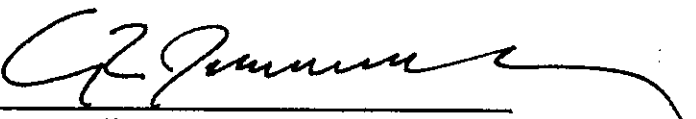
Attorney for the Board.

CERTIFICATE OF SERVICE

I, Colin R. Jorgensen, Assistant Attorney General, do hereby certify that on this 14th day of November, 2013, I have mailed a copy of the foregoing, via First Class U.S. Mail, addressed to the following:

Larry J. Steele
LARRY J. STEELE PLC
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561

Attorney for Effie Collins.


Colin R. Jorgensen

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

EFFIE COLLINS

Plaintiff

V.

ARKANSAS BOARD OF
EMBALMERS & FUNERAL
DIRECTORS, ET AL.

Defendants

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NO: 3:12CV00123 SWW

ORDER

Plaintiff Effie Collins brings this action pursuant to 42 U.S.C. § 1983 against the Arkansas Board of Embalmers and Funeral Directors (the "Board") and Board members, sued in their individual and official capacities. Collins also sues three funeral homes-- Christian Funeral Directors, Inc., Old Cobb, Inc., and Wilson Funeral Home--and owners and employees of the funeral homes--Rodney E. Williams, Laron Jackson, Billy Holifield, and LaFonce Latham (collectively, the "Funeral Home Defendants").

Before the Court are the Funeral Home Defendants' motions to dismiss (ECF Nos. 9, 10, 16, 17, 18, 19, 20, 24, 25, 26), Collins's responses in opposition (ECF Nos. 40, 41, 42, 48), and the Funeral Home Defendants' replies (ECF Nos. 49, 51, 52). Also before the Court is a motion to dismiss by the Board (ECF Nos. 13, 14), Collins's response in opposition (ECF Nos. 40, 41, 42, 48), and the Board's reply (ECF No. 50). After careful consideration, and for reasons that follow, Defendants' motions to dismiss are granted.

I. Background



Plaintiff Collins is the owner of Collins Chapel Mortuary, Inc. ("CCM"), and she has faced multiple charges that she failed to comply with Arkansas rules and regulations governing embalmers and funeral directors. Various administrative complaints filed against Collins resulted in fines and license suspensions and the ultimate revocation of her funeral home director's and establishment licenses. As the following background reveals, each disciplinary action taken against Collins, with the exception of one, has been affirmed on judicial review in state court.¹

In 2007, the Arkansas Department of Health complained to the Board that Collins had failed to carry out her duty, as a funeral director, to file a death certificate with the vital records registrar. Collins admitted the charge, and after a hearing, the Board imposed a \$1,500 fine and suspended Collins's funeral director's license for one year.

Collins appealed, and the Circuit Court of Pulaski County affirmed the Board's decision. See ECF No. 13-2, Ex. B. Collins then appealed to the Arkansas Court of Appeals, asserting that (1) the Board erred in denying her request for a hearing continuance, (2) a Board member erred in failing to recuse, (3) the Board's findings were not supported by substantial evidence, and (4) the punishment imposed was so severe as to be arbitrary and capricious. See *Collins v. Arkansas*

¹When ruling on a Rule 12(b)(6) motion, the court must generally ignore matters outside the pleadings, see *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999), and if a court considers evidence outside the pleadings, it must normally convert the motion into one for summary judgment. See *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 698 (8th Cir. 2003). However, a court may consider materials that are necessarily embraced by the complaint and materials that are part of the public record. *Id.* Here, the complaint references the administrative proceedings against Collins, and both Collins and the State provide copies of orders and other documents that are part of the public record and properly considered in deciding Defendants' motions to dismiss. See *Miller v. Redwood Toxicology Laboratory, Inc.*, 688 F.3d 928, 933 (8th Cir. 2012).

Bd. of Embalmers and Funeral Directors, 2009 Ark. App. 498, 1-2, 324 S.W.3d 716, 717

(2009). The Court of Appeals rejected Collins's arguments² and affirmed the Board's decision.

²The Court of Appeals disagreed that the Board abused its discretion in denying Collins's motion for a continuance, noting that Collins's attorney moved for a continuance because Collins failed to show up for the hearing when "something came up." *Collins v. Arkansas Bd. of Embalmers and Funeral Directors*, 2009 Ark. App. 498, 3, 324 S.W.3d 716, 719 (2009). The Court stated: "In the absence of even an allegation of a specific reason for [Collins's] absence, much less a sufficiently compelling reason, it cannot be said that it was an abuse of discretion for the Board to deny her request for a continuance, made in her absence on the day set for the hearing, when other witnesses were present." *Id.*

The Court found no merit to Collins's claim that a Board member erred in failing to recuse. Noting that Collins merely alleged that she and the Board member had a "common personal relationship in the past" that could cause the member to be biased against her, the Court of Appeals concluded that Collins failed to show error or prejudice from the failure to recuse. *See id.* at 4, 324 S.W.3d. at 718.

Regarding the sufficiency of evidence, the appellate court stated:

There was evidence that the decedent died on May 9, 2007, and that a death certificate was signed by a physician and mailed to [Collins's] funeral home on May 21. After a customer complaint that [Collins] refused to file decedent's death certificate was made to the Division of Vital Records on July 17, agents of the Division contacted [Collins] and made demand for the death certificate pursuant to Ark. Code Ann. § 20-18-303(a). [Collins] said that she would "look into it." After repeatedly and fruitlessly contacting [Collins] to obtain the demanded information and death certificate between July 17 and August 13, 2007, and despite an offer by the Division to help facilitate the filing, the Division was required to take the extraordinary step of issuing the death certificate under its own authority.

[Collins] argues that this evidence is insufficient because it failed to show that her failure to provide the demanded information was intentional. We do not agree. Given the number and frequency of contacts that she received from the Division, we think that the Board could reasonably infer that [Collins's] failure to provide the demanded information was intentional. [Collins], in fact, admits that the demanded information was not provided, but asserts that this was merely the result of forgetfulness, employee inefficiency, and her own failure to properly oversee her employees. We do not think that the Board was required on this record to find that her failure to provide the demanded information was the result of such gross negligence and incapacity to perform her duties as she suggests. Furthermore, we think that such gross negligence and incapacity would provide no excuse for

Id.

A second complaint against Collins, lodged by the United States Air Force Mortuary Affairs Division, charged that Collins overcharged the Air Force for the goods and services she provided in the course of handling funeral services for Captain Jeffrey S. Hampton. *See* ECF No. 13-3, Ex. C. After a hearing held on July 15, 2008, the Board made the following findings:

- Collins charged \$22,154.96 for Captain Hampton's funeral services, and the Air Force requested that she provide a copy of CCM's price lists.
- After four telephone calls made over a period of two weeks, the Air Force received a non-itemized statement from Collins that was void of numerous disclosures required by the Federal Trade Commission's Funeral Practice Rule.
- Collins's actions amounted to misrepresentation in violation of a state statute, which permits the Board to suspend or revoke a funeral director's license after a proper hearing and upon a finding that the license holder committed listed

[Collins's] failure to perform, but would instead be a matter at least as serious as a simple refusal to perform by a competent funeral director.

Id., 2009 Ark. App. 498, 4-5, 324 S.W.3d at 718 - 719 (2009). Finally, regarding Collins's charge that the penalty imposed was too severe, the Court of Appeals noted that Collins was not merely late in fulfilling her duties, but was "utterly noncompliant, so much so that the Department of Vital Records was required to file the death certificate itself." *Id.* The Court noted:

There is a qualitative difference between tardiness, even chronic tardiness, and contumacious refusal, and the evidence was sufficient to show that [Collins] was guilty of such refusal, breaking several regulations in the process. The legislature permits the Board to revoke licenses for violations rather than suspend them, and to impose fines in amounts up to \$10,000. Ark. Code Ann. §§ 17-29-311 and 403. Given that the punishments imposed were moderate with respect to that which was authorized, and that the evidence supports a finding that [Collins] acted knowingly and willfully with respect to the violations rather than merely negligently, it cannot be said that the Board's actions were extremely harsh and unreasonable when all the facts are considered.

Id.

activities, including misrepresentation or fraud. *See* Ark. Code Ann. § 17-29-311(a)(2).

The Board concluded that Collins's "numerous violations of state and federal law" demonstrated that she had become unfit to practice as a funeral director. EFC No. 13-3. Accordingly, the Board suspended Collins's license for an additional year, to run consecutive to the initial one-year suspension it had previously imposed, and it suspended CCM's establishment license for a period of two years. *Id.*

Collins appealed, and the Circuit Court of Mississippi County affirmed in part and reversed in part. The Circuit Court found substantial evidence to support the conclusion that CCM's statement of goods and services did not comply with state and federal law, but it found a lack of evidence to support the finding that Collins's actions amounted to misrepresentation and malpractice. *See* ECF No. 13-4.

On May 28, 2009, prior to the Mississippi Circuit Court's decision, the Board held a hearing on a third complaint filed against Collins by individuals who made funeral arrangements for decedent Charles Ellis Jefferson. *See* ECF No. 13-5. The Board held a hearing³ regarding the third complaint and found that Collins carried on business as a funeral director while her license was suspended. The Board further found that Collins's actions constituted misrepresentation or fraud in violation of Ark. Code Ann. § 17-20-311(a)(2). After the hearing, the Board revoked Collins's funeral director's license and CCM's establishment license. Collins appealed to the Mississippi Circuit Court, and the Court affirmed the Board's findings and

³Collins received notice of the hearing but did not make an appearance. In her amended complaint, Collins alleges that she directed her attorney to submit a written request for a continuance of the hearing, but the attorney failed to do so. *See* ECF No. 3, ¶ 88.

conclusions in their entirety. *See* ECF No. 13-6.

Next, Collins petitioned the Board for reinstatement of her licenses. After a hearing, by order dated May 26, 2011, the Board denied Collins's petition. In its order, the Board noted that it had referred criminal charges against Collins to the prosecuting attorney after obituaries published in a local newspaper stated that Collins had provided funeral services after the revocation of her funeral director's and establishment licenses.⁴

On February 17, 2011, Collins entered a *nolo contendere* plea to operating a funeral home without a license. *See* ECF No. 13-8. A judgment entered in the District Court of Mississippi County on February 17, 2011, states: "The Court hereby accepts the plea of Defendant [Collins] and suspends imposition of sentence (SIS) for a period of one (1) year and assesses Court costs of \$140.00; no fine or jail time is required." *Id.*

Collins appealed the Board's decision denying her application for licenses, and by order dated November 7, 2012, the Circuit Court of Mississippi County affirmed. *See* ECF No. 13-9. On March 12, 2013, Collins appealed the Circuit Court's decision to the Arkansas Court of Appeals. *See Collins v. Arkansas Board of Embalmers and Funeral Directors*, No. 13-230 (docket sheet available at <https://courts.arkansas.gov/index.html>). Collins's appeal is currently

⁴Arkansas Code § 17-29-401 provides:

Any person who, after February 28, 1985, practices the science of embalming, engages in the business of funeral directing, or conducts, maintains, manages, or operates a funeral establishment without a license issued under any provision of § 17-29-201 et seq. and § 17-29-301 et seq. shall be guilty of a Class A misdemeanor and subject to the punishment prescribed for Class A misdemeanors in the Arkansas Criminal Code.

Ark. Code Ann. § 17-29-401.

pending.

On May 22, 2012, before Collins filed her most recent appeal in state court, she commenced this lawsuit pursuant to 42 U.S.C. § 1983.⁵ Collins charges that the Board violated her constitutional rights to procedural and substantive due process and equal protection of the law. By way of relief, Collins asks the Court to award her damages and restore her licenses. Collins further charges that the Funeral Home Defendants conspired with Board members to deprive her of her constitutional rights.

II. Funeral Home Defendants' Motions to Dismiss

The Funeral Home Defendants have filed separate motions to dismiss, each asserting that Collins's claims are subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), all facts alleged in the complaint are assumed to be true. *Doe v. Northwest Bank Minn., N.A.*, 107 F.3d 1297, 1303-04 (8th Cir. 1997). The complaint should be reviewed in the light most favorable to the plaintiff, *McMorrow v. Little*, 109 F.3d 432, 434 (8th Cir. 1997), and should not be dismissed if there are pled "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007). A complaint cannot, however, simply leave open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. *Id.* at 1968. Rather, the facts set forth in the complaint must be sufficient to nudge the claims "across the line from the conceivable to plausible." *Id.* at 1974. "Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the

⁵Collins also brings supplemental state law claims under the Arkansas Civil Rights Act.

reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Ashcroft v. Iqbal* 556 U.S. 662, 679, 129 S.Ct. 1937, 1950 (2009)(quoting Fed. R. Civ. P. 8(a)(2)).

A plaintiff suing under § 1983 must establish two essential elements: (1) the defendant committed the complained of conduct under color of state law, and (2) the conduct deprived the plaintiff of a right secured by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983.⁶ The Funeral Home Defendants argue, among other things, that Collins has failed to allege facts showing that they acted under color of state law.

“The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” *West v. Atkins*, 487 U.S. 42, 49, 108 S.Ct. 2250, 2255 (1988)(quoting *United States v. Classic*, 313 U.S. 299, 326, 61 S.Ct. 1031, 1043(1941)). A private party acts under color of state law and may be held liable under § 1983 if he is a willful participant in joint action with the State or its agents. *See Mershon v. Beasley*, 994 F.2d 449, 451 (8th Cir. 1993)(quoting *Dennis v. Sparks*, 449 U.S. 24, 25 (1980)); *see also Tower v. Glover*, 467 U.S. 914, 920, 104 S.Ct. 2820 (1984) (“[A]n otherwise private person acts ‘under color of’ state law when engaged in a conspiracy with state officials to

⁶Similar to § 1983, the Arkansas Civil Rights Act provides a cause of action against persons who, under color of any statute, ordinance, regulation, custom, or usage of the State of Arkansas, subject any person to a violation of rights secured under the Arkansas Constitution. *See* Ark. Code Ann. § 16-123-105 (a).

deprive another of federal rights.”). A plaintiff seeking to hold a private party liable under § 1983 must allege, at the very least, that there was a mutual understanding, or a meeting of the minds, between the private party and the state actor. *See Mershon v. Beasley*, 994 F.2d 449, 451 (8th Cir. 1993)(citations omitted); *see also Dossett v. First State Bank*, 399 F.3d 940, 951 (8th Cir. 2005)(citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152, 90 S.Ct. 1598 (1970)) (“Under § 1983, a plaintiff must establish not only that a private actor caused a deprivation of constitutional rights, but that the private actor willfully participated with state officials and reached a mutual understanding concerning the unlawful objective of a conspiracy.”). The Supreme Court has rejected the notion that a private party’s mere invocation or participation in state legal procedures satisfies § 1983’s state action requirement. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 n.21 (1982).

Here, the amended complaint is void of a single allegation indicating joint action or a meeting of the minds between the Funeral Home Defendants and the Board members. Collins’s sole allegations pertaining to the Funeral Home Defendants is that agents of the funeral homes submitted letters to the Board expressing their opinions about Collins’s application for reinstatement of her funeral home director’s license:

- Defendant Williams, an employee of Defendant Christian Funeral Home, Inc., submitted a letter to the Board, complaining that Collins used his name and embalmer’s license number to file death certificates. In his letter, Williams conveyed that he had reported Collins’s unauthorized use of his name and license number to a prosecuting attorney and law enforcement, and he requested that the Board intervene on his behalf and stop Collins from “using [his] identity fraudulently.” ECF No. 3, Ex. A.
- Defendant Billy Holifield, manager of Defendant Cobb Funeral Home, now known as Old Cobb Funeral Home, submitted a letter to the Board stating his opinion that reinstatement of Collins’s license would be a “travesty” to his profession. ECF No. 3, Ex. B. Holifield’s letter further states that he was aware of Collins’s “blatant disregard,

disrespect, contempt and lack of professional behavior . . . ” *Id.*

- Defendant LaFonce Latham, owner and manager of Defendant Wilson Funeral Home, submitted a letter to the Board stating that he was aware of Collins’s “total lack of respect” for the Board, the County Coroner’s Office, and other funeral homes. *See* ECF No. 3, Ex. C. And Latham expressed his opinion that Collins’s license application should be denied.

The Court finds that Collins has failed to allege facts demonstrating that the Funeral Home Defendants acted under color of state law or engaged with Board members in a conspiracy to deprive her of constitutional rights. Accordingly, Collins’s claims against the separate defendants will be dismissed with prejudice.

III. The Board’s Motion to Dismiss

Collins sues the Board and Board members in their individual and official capacities. The State seeks dismissal of Collins’s official-capacity claims pursuant to the doctrine of sovereign immunity and dismissal of Collins’s individual-capacity claims pursuant to the doctrines of qualified and absolute immunity. Alternatively, the State seeks dismissal on several additional grounds including abstention under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746 (1971).

The sovereign immunity of the States recognized in the Eleventh Amendment⁷ bars any suit brought in federal court against a state or state agency, regardless of the nature of the relief

⁷The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. The States’ immunity from suit existed long before ratification of the Constitution, and it neither derives from or is limited by the Eleventh Amendment. *See Alden v. Maine*, 119 S. Ct. 2240, 2254 (1999).

sought, unless Congress has abrogated the States' immunity or a state has consented to suit or waived its immunity. *See Seminole Tribe v. Florida*, 517 U.S. 44, 74 (1996); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Edleman v. Jordan*, 415 U.S. 651, 663 (1974). In addition to barring all claims brought directly against a state or state agency, the Eleventh Amendment protects state officials sued in their official capacities from all claims, with the exception of certain claims for prospective, equitable relief. *See Murphy v. Arkansas*, 127 F.3d 750, 754 (8th Cir. 1997).

The State has neither consented to suit nor waived its immunity with respect to Collins's § 1983 claims, and Congress did not abrogate the States' sovereign immunity when it enacted 42 U.S.C. § 1983. *See Burk v. Beene*, 948 F.2d 489, 492-93 (8th Cir. 1991). Collins's claims against the Board, a state agency, *see* Ark. Code Ann. § 17-29-201, are barred under the doctrine of sovereign immunity, and her claims for money damages against Board members sued in their official capacities are likewise barred.

Under *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908), state officials may be sued in their official capacities for prospective injunctive relief without violating the Eleventh Amendment, but such relief must be aimed at preventing future violations of federal law. The Court assumes for the purpose of review that this exception applies to Collins's official-capacity claims to the extent that she seeks reinstatement of her funeral director's and establishment licenses. However, for reasons that follow, the Court will abstain from hearing these claims.

The *Younger* abstention doctrine requires federal courts to abstain from accepting jurisdiction in cases where equitable relief is requested and granting relief would interfere with pending state proceedings in such a way as to offend principles of comity and federalism. *See*

Night Clubs, Inc. v. City of Fort Smith, Ark. 163 F.3d 475, 477 n1. (8th Cir. 1998). Abstention is warranted under *Younger* “if the action complained of constitutes the basis of an ongoing state judicial proceeding, the proceedings implicate important state interests, and an adequate opportunity exists in the state proceedings to raise constitutional challenges.” *Harmon v. City of Kansas City, Mo.*, 197 F.3d 321, 325 (8th Cir. 1999)(citing *Fuller v. Ulland*, 76 F.3d 957, 959 (8th Cir.1996)).

The Court finds that the criteria for abstention under *Younger* are met with respect to Collins’s claim for license reinstatement. First, in simultaneous proceedings, Collins asks this Court and the Arkansas Court of Appeals to overturn the Board’s decision and reinstate her licenses, and Collins’s appeal in state court is ongoing.⁸ Second, the State’s interest in the regulation of funeral directors and establishments is an important state interest. Third, Collins will have an adequate opportunity to raise her constitutional claims in state court.⁹ The Court

⁸For purposes of applying *Younger* abstention, the relevant time for determining if there are ongoing state proceedings is when the federal complaint is filed. See *Tony Alamo Christian Ministries v. Selig*, 664 F.3d 1245, 1250 (8th Cir. 2012). Although Collins commenced this federal lawsuit before she filed her most recent appeal in state court, “*Younger* requires a federal court to abstain not only when and while the state trial court proceedings [are] ongoing, but until the state defendant (and federal plaintiff) exhausts his appellate remedies.” *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608–09, 95 S. Ct. 1200 (1975).

⁹The Arkansas Court of Appeals may reverse the agency decision if it concludes that “[t]he substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . [i]n violation of constitutional or statutory provisions” *Collins v. Arkansas Bd. of Embalmers and Funeral Directors*, 2009 Ark. App. 498, 2-3, 324 S.W.3d 716, 718 (2009)(quoting *Arkansas Board of Embalmers & Funeral Directors v. Reddick*, 366 Ark. 89, 92–93, 233 S.W.3d 639, 642–43 (2006)(citing Ark. Code Ann. § 25-15-212(h)).

will abstain from entertaining Collins's official-capacity claims seeking reinstatement of licenses, and those claims will be dismissed without prejudice.

The State argues that Collins's remaining claims against Board members in their individual capacities are barred under either absolute or qualified immunity doctrines. Agency officials who perform quasi-judicial functions may be entitled to absolute immunity with respect to claims against them in their individual capacities. *See Dunham v. Wadley*, 195 F.3d 1007, 1010 (8th Cir. 1999)(finding veterinary licensing board members who perform quasi-judicial functions entitled to absolute immunity). Absolute immunity is appropriate when the official's responsibilities and functions are similar to those involved in the judicial process, the official's actions are likely to result in lawsuits for damages by disappointed parties, and sufficient safeguards exist in the regulatory framework to control unconstitutional conduct. *See Dunham*, 195 F.3d at 1010(citations omitted).

The Court finds that the requisites for absolute immunity are met in this case. Arkansas law authorizes the Board to suspend or revoke licenses of funeral directors and embalmers, *see* Ark. Code Ann. § 17-29-311, and to revoke establishment licenses for violations of state licensing law. *See* Ark. Code Ann § 17-29-307. The Board also has the power to impose a civil penalty not to exceed \$10,000 on persons who violate statutes and rules governing funeral directors. *See* Ark. Code Ann. § 17-29-403. The Board's functions are unquestionably judicial in nature, and its decisions and actions are likely to result in lawsuits for damages by disappointed parties such as Collins. Furthermore, Arkansas law provides sufficient safeguards to control unconstitutional conduct by Board members. Pursuant to the Arkansas Administrative Procedures Act, a state court may reverse a Board decision if the agency's findings or decisions

lack evidentiary support, violate constitutional or statutory provisions, exceed agency authority; result from unlawful procedure; or are arbitrary, capricious, or an abuse of discretion. *See Collins v. Arkansas Bd. of Embalmers and Funeral Directors*, 2009 Ark. App. 498, 2-3, 324 S.W.3d 716, 718 (2009)(citing *Arkansas Board of Embalmers & Funeral Directors v. Reddick*, 366 Ark. 89, 92-93, 233 S.W.3d 639, 642-43 (2006)(citing Ark. Code Ann. § 25-15-212(h)).

Collins charges that Board members violated her constitutional rights in the course of performing official duties that are judicial in nature, and she fails to allege facts demonstrating the Board members acted in complete absence of all jurisdiction.¹⁰ Accordingly, the Court finds that the Board members are entitled to absolute immunity and that Collins's individual-capacity claims must be dismissed with prejudice.

IV. Conclusion

For the reasons stated, Defendants' motions to dismiss (ECF Nos. 9, 13, 16, 18, 20, 24) are GRANTED. Plaintiff's official-capacity claims against members of the Arkansas Board of Embalmers and Funeral Directors, seeking reinstatement of licences, are DISMISSED

¹⁰A judicial or quasi-judicial official is not immune from lawsuits based on actions taken in the complete absence of all jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11, 112 S.Ct. 286, 288, (1991). However, the scope of the official's jurisdiction is construed broadly, and a distinction exists between acts performed in excess of jurisdiction and those done in the complete absence of jurisdiction: "As to the former, a 'judge acts in excess of jurisdiction if the act complained of is within his general power of jurisdiction but is not authorized because of certain circumstances.' As to the latter, '[t]here is a clear absence of jurisdiction when a court of limited jurisdiction attempts to adjudicate a case outside of its jurisdiction, such as when a probate court conducts a criminal trial.'" *Duty v. City of Springdale*, 42 F.3d 460, 462 -463 (8th Cir. 1994)(quoting *Billingsley v. Kyser*, 691 F.2d 388, 389 (8th Cir. 1982)(first internal quotation); *Mann v. Conlin*, 22 F.3d 100, 104 (6th Cir.), *cert. denied*, 513 U.S. 870, 115 S.Ct. 193(1994)(second internal quotation)).

WITHOUT PREJUDICE, and Plaintiff's additional claims are DISMISSED WITH
PREJUDICE.

IT IS SO ORDERED THIS 31ST DAY OF MAY, 2013.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

EFFIE COLLINS

Plaintiff

V.

ARKANSAS BOARD OF
EMBALMERS & FUNERAL
DIRECTORS, ET AL.

Defendants

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NO: 3:12CV00123 SWW

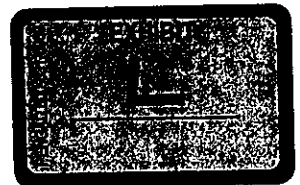
JUDGMENT

Consistent with the Order that was entered on this day, it is CONSIDERED, ORDERED, and ADJUDGED that this case is DISMISSED. Plaintiff's official-capacity claims against members of the Arkansas Board of Embalmers and Funeral Directors, seeking reinstatement of licences, are DISMISSED WITHOUT PREJUDICE, and Plaintiff's additional claims are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 31ST DAY OF MAY, 2013.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE



Cite as 2013 Ark. App. 678

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-13-230

EFFIE COLLINS and COLLINS CHAPEL
MORTUARY, INC.

APPELLANTS

V.

ARKANSAS BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

APPELLEE

Opinion Delivered November 13, 2013

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. CV-11-144]

HONORABLE BRENT DAVIS,
JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

The appellants in this case are Effie Collins and Collins Chapel Mortuary, Inc. (Collins Chapel). Ms. Collins was licensed as a funeral director, and she owns Collins Chapel, which held a funeral establishment license. The appellants' licenses were previously revoked, and the appellants applied for reinstatement. After a hearing, the Board of Embalmers and Funeral Directors denied the appellants' license applications. The circuit court affirmed the Board. In this appeal, Ms. Collins and Collins Chapel argue that the Board's decision was not supported by substantial evidence, and that the decision was arbitrary and capricious. We affirm.

Our review of the decisions of administrative agencies is limited in scope. *Ark. Bd. of Embalmers & Funeral Dirs. v. Reddick*, 366 Ark. 89, 233 S.W.3d 639 (2006). With respect to issues of fact, the decisions on credibility and weight of the evidence is within the

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Cite as 2013 Ark. App. 678

administrative agency's discretion. *Id.* With respect to legal issues, administrative agencies are better equipped by specialization, insight through experience, and more flexible procedures than courts, to determine and analyze legal issues affecting their agencies. *Id.*

Pursuant to Arkansas Code Annotated section 25-15-212(h) (Repl. 2002), the circuit court or appellate court may reverse the agency decision if it concludes that the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the agency's statutory authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Not supported by substantial evidence of record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion.

The standard of review to be used by both the circuit court and the appellate court is whether there is substantial evidence to support the agency's findings. *Ark. Dep't of Human Servs. v. Bixler*, 364 Ark. 292, 219 S.W.3d 125 (2005). Thus, our appellate review is directed not to the circuit court's decision, but rather to the decision of the administrative agency. *Id.*

In determining whether a decision is supported by substantial evidence, we review the record to ascertain if the decision is supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Zepecki v. Ark. Veterinary Med. Examining Bd.*, 2010 Ark. App. 187, 375 S.W.3d 41. The requirement that administrative action not be arbitrary or capricious is less demanding than the requirement that it be supported by substantial evidence. *Capitol Zoning Dist. Comm'n v. Cowan*, 2012 Ark. App. 619, __

S.W.3d ___. When an agency's decision is supported by substantial evidence, it automatically follows that it cannot be classified as unreasonable or arbitrary. *Id.*

The lengthy procedural history of this case began in April 2008, when Ms. Collins's funeral-director license was suspended and she was fined \$1500. The Board imposed these sanctions after finding that Ms. Collins violated a statute by failing to file the death certificate of Fanny May Jackson after Ms. Collins and Collins Chapel handled her funeral in May 2007. The evidence showed that Ms. Collins ignored repeated contacts from the Division of Vital Records, requiring the Division to take the extraordinary step of issuing the death certificate under its own authority. Ms. Collins appealed the Board's decision, and it was affirmed by the circuit court and then affirmed by the court of appeals. See *Collins v. Ark. Bd. of Embalmers & Funeral Dirs.*, 2009 Ark. App. 498, 324 S.W.3d 716.

A subsequent complaint was made against Ms. Collins and Collins Chapel regarding the funeral services they provided for Jeffrey Hampton in November 2007. After a hearing, the Board entered a decision on July 24, 2008, finding that Ms. Collins committed numerous violations of state and federal law, including that the statement of goods and services selected, the general price list, and the outer-burial-containing price were all in noncompliance. The Board suspended Ms. Collins's license for an additional year, and placed Collins Chapel's establishment license on probation for two years. On appeal of that decision, the circuit court found substantial evidence to support the above violations, but found other findings unsupported and remanded to reconsider sanctions. Our record, however, does not contain any further action on those proceedings.

On June 3, 2009, the Board revoked both Ms. Collins's and Collins Chapel's licenses. Those revocations were based on the Board's findings that, during Ms. Collins's license suspension in August 2008, Ms. Collins acted as the funeral director and Collins Chapel handled the funeral of Charles Jefferson. In addition to finding that Ms. Collins acted as a funeral director without a license, the Board found that she committed other violations while handling the funeral, including misrepresentation and fraud. The revocations were appealed to the circuit court and affirmed on March 16, 2011.

In March 2011, Ms. Collins and Collins Chapel requested reinstatement of their funeral-director and funeral-establishment licenses. A hearing on these applications was scheduled for March 15, 2011, and was continued until May 24, 2011.

At the May 24, 2011 hearing, it was established that the Board had received complaints that Ms. Collins was acting as a funeral director after her license had been revoked. The Board had previously referred these complaints to the prosecutor, and on February 17, 2011, Ms. Collins pleaded nolo contendere to operating a funeral home without a license, for which she received a one-year suspended imposition of sentence. A newspaper dated September 9, 2009, was introduced into evidence, and it included two obituaries listing Collins Chapel as the provider of funeral services. Boyd Heath, an inspector for the State Board of Embalmers and Funeral Directors, and Captain Larry Robinson, a criminal investigator, testified that they observed Ms. Collins providing these funeral services in September 2009. These witnesses observed a casket being loaded from the Collins Chapel mortuary building into a hearse, and both witnesses observed graveside services being conducted by Ms. Collins. Also

introduced at the hearing was a letter from embalmer Rodney Williams to the Board, wherein Mr. Williams stated that Ms. Collins had listed him as the embalmer on several death certificates, but that he had never embalmed for Ms. Collins.

On August 15, 2011, the Board entered a decision denying Ms. Collins's and Collins Chapel's requests to have their licenses reinstated, specifically finding that Ms. Collins and Collins Chapel provided funeral services after their licenses were revoked. The appellants filed a petition for judicial review, and the circuit court entered an order affirming the Board's decision on November 7, 2012, concluding that the Board's decision was supported by substantial evidence. Ms. Collins and Collins Chapel now appeal to this court.

On appeal, Ms. Collins and Collins Chapel contend that the Board's actions were an abuse of power and based on a petty grievance with an agenda to harm Ms. Collins. The appellants particularly take issue with Board members Effie Clay, Terry Woodard, and Garland Camper, arguing that these members poisoned the proceedings and were biased against Ms. Collins, engaging in an intentional course of conduct to deprive her of a license as a funeral director. The appellants also argue that the Board's decision was based entirely on hearsay evidence, that she was denied due process and equal protection as guaranteed by the United States Constitution, and that she was a victim of sex discrimination. The appellants further note that Ms. Collins's criminal record for operating a funeral home without a license was expunged in March 2012, and they assign error to the Board's consideration of its prior orders of suspension and revocation and the findings contained therein. The appellants also dedicate a considerable portion of their brief to challenging the Board's suspension of

Ms. Collins's license in April 2008. The appellants argue that the Board's denial of their requests for reinstatement was unsupported by substantial evidence and was arbitrary and capricious, and therefore that the Board's decision should be reversed.

Pursuant to Arkansas Code Annotated section 17-29-201 et seq. (Repl. 2010), the Arkansas State Board of Embalmers and Funeral Directors is the state agency charged with the task of regulating the funeral-services profession, which includes licensure and regulation of funeral directors and funeral establishments. The Board is authorized to suspend or revoke licenses of funeral directors for violations of the licensing law under section 17-29-311, and to revoke establishment licenses under section 17-29-307. *Ark. Bd. of Embalmers & Funeral Dirs. v. Richardson*, 2009 Ark. App. 447. Arkansas Code Annotated section 17-29-311(a)(9) provides that the Board may "refuse to issue or renew a license" upon a finding that the party in question has "[v]iolated any provision of this subchapter." Arkansas Code Annotated section 17-29-311(e) provides:

It shall be unlawful for any person, partnership, corporation, or association who has not been licensed or registered as specified in this subchapter to transact, practice, or hold himself or herself or itself out as transacting or practicing embalming or funeral directing or operating or maintaining a funeral establishment within this state.

Contrary to the appellants' argument, in reaching its decision in this case as to whether to reinstate appellants' licenses, it was relevant for the Board to consider the previous infractions against appellants resulting in their licensure suspensions and revocations. The record demonstrates that beginning in May 2007, the appellants engaged in a systematic course of committing violations, resulting in suspensions, probation, and ultimately revocation of their funeral-director and funeral-establishment licenses. Although appellants argue on appeal that

Ms. Collins's initial suspension in April 2008 was improper, that suspension was affirmed in a prior appeal to this court, and this argument is now barred by res judicata. See *City of Fayetteville v. Fayetteville Sch. Dist. No. 1*, 2013 Ark. 71, __ S.W.3d __ (res judicata precludes relitigation of a cause of action). The record shows that after the suspension Ms. Collins's and Collins Chapel's licenses were revoked for providing funeral services without a license, and in the hearing on appellants' requests for reinstatement evidence was presented showing that even after their licenses were revoked the appellants continued to conduct funerals in violation of our statutes.¹ In light of the pattern of violations and the appellants' complete and intentional disregard of the Board's prior orders of suspension and revocation, we have no hesitation in holding that the Board's denial of appellants' requests for licensure reinstatement was supported by substantial evidence and was not an arbitrary or capricious decision.

Although the appellants also argue on appeal that their constitutional rights were violated, most of these arguments, including Ms. Collins's claim that she was a victim of sex discrimination, were not made to the Board and thus are not preserved for review. See *Ark. Bd. of Exam'rs in Counseling v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998) (It is essential to a review under the Administrative Procedure Act that issues must be raised before the administrative agency appealed from or they will not be addressed by the appellate court.). Moreover, there is nothing in this record to demonstrate any constitutional violations.

¹Although Ms. Collins's criminal record for operating a funeral home without a license was later expunged, the expungement was not before the Board because it came after the Board's decision. Moreover, there was ample evidence outside of her criminal record to support the Board's finding that Ms. Collins conducted funerals after her license had been revoked.

Ms. Collins did file a motion below for Board member Garland Camper to recuse, noting that he had previously resigned as Pulaski County Coroner and arguing that due process required that he recuse or be removed from the Arkansas State Board of Embalmers and Funeral Directors. However, employment as a county coroner is not among the requirements for any Board position, *see* Ark. Code Ann. § 17-29-201, and there was no evidence presented showing that Mr. Camper was unqualified to serve on the Board or biased against Ms. Collins. Although appellants also challenge on appeal the presence of Mr. Woodard and Ms. Clay as members of the Board, the record shows that Mr. Woodard recused himself from these proceedings, and there is nothing in the record showing that appellants asked Ms. Clay to recuse. Furthermore, there was no evidence presented to indicate that any Board member was biased against Ms. Collins as appellants now suggest. Finally, as to appellants' argument that the Board's decision was entirely based on hearsay, we observe that the Board heard direct testimony at the hearing that appellants were conducting a funeral without a license. Moreover, we have held that hearsay is normally admissible in administrative proceedings if it is reliable and probative. *Ark. State Bd. of Nursing v. Long*, 8 Ark. App. 288, 651 S.W.2d 109 (1983).

We conclude that none of the contentions presented by the appellants in this appeal are persuasive, and on this record we hold that the Board's decision was supported by substantial evidence. Therefore, we affirm the decision of the Board.

Affirmed.

WALMSLEY and BROWN, JJ., agree.

Larry J. Steele PLC, by: *Larry J. Steele*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Mark N. Ohrenberger*, Ass't Att'y Gen., for appellee.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Arkansas
State Claims Commission

EFFIE COLLINS

DEC 19 2013

CLAIMANT

VS.

CASE NO. 13-0609-CC

RECEIVED

ARKANSAS STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

RESPONDENT

**CLAIMANT'S RESPONSE TO
RESPONDENT'S RENEWED MOTION TO DISMISS**

Comes Claimant, Effie Collins ("Claimant" or "Collins"), by and through her attorney, Larry J. Steele, and for her Response to Respondent's Renewed Motion to Dismiss, states:

1. Claimant, Effie Collins, incorporates by reference, pursuant to Ark. R. Civ. P. 10(c), her Response to Respondent's Motion to Dismiss, Brief and Exhibits A-N filed on or about April 9, 2013.

2. Rulings made by the United States District Court and Arkansas court of Appeals failed to consider evidence of Board member, Garland Camper's, civil litigation.

WHEREFORE, Claimant prays for relief as described in her Complaint, for costs and attorney's fees.

Respectfully submitted,

LARRY J. STEELE PLC

By: Larry J. Steele
LARRY J. STEELE (78146)
115 Abbey Road
P.O. Box 561
Walnut Ridge, AR 72476-0561
(870) 886-5840
(870) 886-5873 fax
email: steelelaw7622@sbcglobal.net
Attorney for Claimant, Effie Collins

CERTIFICATE OF SERVICE

I, Larry J. Steele, hereby certify that I have mailed a copy of the foregoing CLAIMANT'S RESPONSE TO RESPONDENT'S RENEWED MOTION TO DISMISS, by U.S. Mail, postage prepaid, this 17th day of December, 2013, to the following:

Mr. Colin R. Jorgensen
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201

Larry J. Steele
LARRY J. STEELE

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 3,000,000.00

Claim No. 13-0609-CC

Effie Collins Claimant

vs.

Attorneys

Larry Steele, Attorney Claimant

AR Board of Embalmers & Funeral Directors
State of Arkansas Respondent

Colin Jorgensen, Asst. Attorney General
Respondent

Date Filed February 22, 2013

Type of Claim Loss of Wages+

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Renewed Motion to Dismiss," for the reasons contained therein. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Renewed Motion to Dismiss," for the reasons contained therein. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing January 9, 2014

Date of Disposition January 9, 2014

Chairman

Commissioner

Commissioner

Larry J. Steele PLC

ATTORNEY AT LAW
115 Abbey Road, P.O. Box 561
WALNUT RIDGE, AR 72476-0561
e-mail: steelelaw7622@sbeglobal.net

PHONE: (870) 886-5840

FAX: (870) 886-5873

CERTIFIED

RETURN RECEIPT REQUESTED

7010 0780 0001 0910 1290

January 21, 2014

Mr. Norman L. Hodges, Jr., Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201

RE: Effie Collins v. Arkansas State Board of Embalmers and Funeral Directors
Case No. 13-0609-CC

Dear Mr. Hodges:

Please accept this letter as my request to appeal the enclosed decision denying and dismissing Ms. Collins' claim to the Legislative Sub Committee, which I received in the mail last week.

Sincerely,


Larry J. Steele

LJS/jas

cc: Ms. Effie Collins

Arkansas
State Claims Commission
JAN 23 2014

RECEIVED