

RETURN DATE: MARCH 26, 2002

STATE OF CONNECTICUT	:	SUPERIOR COURT
<i>Plaintiff</i>	:	
	:	JUDICIAL DISTRICT OF
	:	HARTFORD
v.	:	
WEINSTEIN MORTUARY, INC.,	:	
MORTON WEINSTEIN,	:	
MICHAEL WEINSTEIN, and	:	
PAUL WEINSTEIN	:	
<i>Defendants</i>	:	FEBRUARY 26, 2002

COMPLAINT

FIRST COUNT

1. This is an action under the Connecticut Unfair Trade Practices Act (“CUTPA”), Chapter 735a of the Connecticut General Statutes (Conn. Gen. Stat.), to secure injunctive relief against the Defendants’ alleged unfair or deceptive acts and practices which violate Conn. Gen. Stat. § 42-110b(a), to obtain relief as is necessary to redress injury to consumers resulting from the Defendants’ violations of law, to obtain appropriate equitable relief, and for civil penalties.

THE PARTIES

2. The plaintiff is the State of Connecticut, represented by Richard Blumenthal, Attorney General of the State of Connecticut, acting at the request of James T. Fleming, Commissioner of Consumer Protection, pursuant to Conn. Gen. Stat. § 42-110m(a).

3. Defendant Weinstein Mortuary, Inc. (Weinstein) is a Connecticut corporation that has been and is engaged in the trade or commerce of advertising and/or offering to sell or selling funeral services. Weinstein's principal place of business is located at 640 Farmington Avenue, Hartford, Connecticut 06106.

4. Defendants Morton Weinstein and Michael Weinstein, are officers and/or directors of Weinstein Mortuary, Inc. Paul Weinstein is an employee of Weinstein Mortuary. Morton Weinstein, Michael Weinstein and Paul Weinstein have personally controlled, directed, participated in, and/or had knowledge of the acts and practices set forth herein.

DEFENDANTS' COURSE OF CONDUCT

5. Whenever reference is made in this complaint to any act or practice of a Defendant, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and representatives of said Defendant did, or authorized, such act or practice, on behalf of said Defendant while actively engaged in the scope of their duties.

6. Whenever reference is made in this complaint to any act or practice of the Defendants, such allegations shall be deemed to mean the act of each Defendant acting individually and jointly.

7. Beginning at a date no later than January, 1996, and continuing to the present, the Defendants have offered to sell and sold funeral services and merchandise to consumers in Connecticut.

8. As a part of their funeral business, the Defendants have offered for sale and sold services which include the care for and preparation of deceased human bodies for burial

or cremation, the arrangement, supervision, and conduction of the funeral ceremony, and the final disposition of the deceased human body.

9. As part of their funeral business, the Defendants have offered for sale or sold funeral merchandise which includes, but is not limited to: (1) caskets, which are rigid containers designed for the encasement of human remains; and (2) outer burial containers (commonly known as burial vaults) and grave boxes and liners, which are containers designed for placement in the grave around the casket.

10. As part of their funeral business, the Defendants obtained or otherwise arranged for the delivery or provision of services and merchandise by third parties, which the Defendants paid for on behalf of the customer. These items or expenses are referred to as “cash advanced” items.

11. As part of their funeral business, the Defendants prepared price lists that purport to itemize all available services and merchandise offered for sale, or available through the Defendants, as well as the specific charge to consumers for each service or merchandise item. These list include a general price list, casket price list, and outer burial container price list. Additionally, the Defendants provided consumers with a Statement of Goods and Services itemizing all of the services and merchandise selected by the consumer and the charge for each item.

12. In selling or offering for sale funeral services and merchandise, the Defendants are required to comply with all applicable State and Federal statutes and regulations, more specifically, those set forth in Conn. Gen. Stat. §§ 20-230a through 20-230b, Conn. Gen. Reg. §§ 20-211-34 and 20-211-35, and the Federal Trade Commission Funeral Rule, 16 C.F.R. § 453.1 et. seq. (Funeral Rule).

13. Each Defendant's course of conduct and the Defendants' conduct undertaken in concert with each other, as alleged herein, have been undertaken in the conduct of trade or commerce, as defined in Conn. Gen. Stat. § 42-110a(4).

DEFENDANT'S VIOLATION OF CUTPA

14. In connection with its offer for sale, selling, and providing of funeral services and merchandise, the Defendants, individually, and in concert with each other, have made or caused to be made, directly or indirectly, explicitly or by implication, representations and omissions which are material, false, and likely to mislead, including but not limited to the following:

- a. that the amount the Defendants charged consumers for cash advanced items was the cost incurred by the Defendants in obtaining said items for the consumer;
- b. that the Defendants would preserve the bodies of decedents through refrigeration, as opposed to embalming;
- c. that the Defendants would arrange for members of the Chevra Kadisha to perform sacred pre-burial rites known as a Tahara on the decedent;
- d. that the Defendants would provide customers with outer burial containers of a particular grade and quality for a specified price; and
- e. that, prior to August 1, 2000, the outer burial containers available for purchase by customers did not include the outer burial container known as either a "grave liner" or "liner."

15. Contrary to the Defendant's representations:

- a. the Defendants charged consumers an extra fee or premium for obtaining "cash advance" items;

b. the Defendants embalmed bodies without authorization from the decedent's family, and concealed the embalming by charging the family for refrigeration and failing to certify on the death certificate that the body was embalmed;

c. the Defendants failed to arrange to have the Tahara performed by members of the Chevra Kadisha and instead directed its employees to place a shroud over the body and then charged the family for the Tahara;

d. the Defendants procured and provided customers with an outer burial container of a lesser grade and quality while charging the customer the price of a higher grade outer burial container; and

e. liners were readily available for sale by the Defendants, who did offer liners for sale to some customers.

16. The Defendants' representation, omissions and practices, as alleged herein, have been and are material, false and likely to mislead consumers acting reasonably and therefore constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b(a).

SECOND COUNT

1-16. The allegations of paragraphs 1 through 16 of the First Count are incorporated herein as paragraphs 1 through 16 of the Second Count.

17. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

THIRD COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Third Count.

14. On or about November 28, 2001, the family of Mrs. Gertrude Herrmann contracted with the Defendants for the burial of Mrs. Herrmann in an orthodox Jewish cemetery in Hartford, Connecticut.

15. Contrary to the desires of Mrs. Herrmann's family that the Defendants provide burial services and merchandise consistent with Mrs. Herrmann's Orthodox Judaic religious beliefs, which included burial in an Orthodox Judaic cemetery in accordance with Orthodox Judaic burial practices, and contrary to the Orthodox Judaic religious beliefs regarding burial practices followed by the cemetery, the Defendants utilized a metal casket to bury Mrs. Herrmann.

16. The aforementioned acts and practices of the Defendants violate the public policy that requires a funeral services provider to conduct its business in a professional manner without negligence, misconduct, or incompetency, as expressed and embodied in Conn. Gen. Stat. § 20-227.

17. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumers.

18. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

FOURTH COUNT

1-18. The allegations of paragraphs 1 through 18 of the Third Count are incorporated herein as paragraphs 1 through 18 of the Fourth Count.

19. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

FIFTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Fifth Count.

14. The Defendants' price list for their outer burial containers failed to list all of the outer burial containers available to customers.

15. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to list all of the available services and merchandise that it sells on its price list, as expressed and embodied in Conn. Gen. Stat. § 20-230a and 16 C.F.R. § 453.2 of the Funeral Rule.

16. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumer and others.

17. The Defendants' acts and practices as alleged herein constitute unfair acts or practices in violation of Conn. Gen. Stat. 42-110b.

SIXTH COUNT

1-17. The allegations of paragraphs 1 through 17 of the Fifth Count are incorporated herein as paragraphs 1 through 17 of the Sixth Count.

18. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

SEVENTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Seventh Count.

14. The Defendants established set prices for particular outer burial containers for particular periods of time. Accordingly, the Defendants periodically updated their price lists and included on those price lists the effective dates of those prices.

15. The Defendants, however, charged customers amounts for outer burial containers in excess of those amount listed on the Defendants' effective price list.

16. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to provide all customers with the same choices of funeral services and merchandise at the same price, with limited exceptions for discounting, as expressed and embodied in Conn. Gen. Stat. § 20-230a and 16 C.F.R. § 453.2.

17. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumers.

18. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

EIGHTH COUNT

1-18. The allegations of paragraphs 1 through 18 of the Seventh Count are incorporated herein as paragraphs 1 through 18 of the Eighth Count.

19. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

NINTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Ninth Count.

14. The Defendants created multiple contemporaneous price lists with different prices for the same merchandise.

15. The Defendants provided certain customers with price lists containing artificially inflated prices inconsistent with the prices charge other customers for the same merchandise as set forth on other price lists and on the other customers' Statement of Goods and Services.

16. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to provide all consumers with a uniform price list of available services and merchandise to consumers, as expressed and embodied in Conn. Gen. Stat. § 20-230a and 16 C.F.R. § 453.2.

17. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumer and others.

18. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

TENTH COUNT

1-18. The allegations of paragraphs 1 through 18 of the Ninth Count are incorporated herein as paragraphs 1 through 18 of the Tenth Count.

19. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

ELEVENTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Eleventh Count.

14. The Defendants' General Price List effective August 1, 2000, contains contradictory disclosure statements that the Defendants will charge the consumer a service charge or fee for obtaining cash advanced items, including flowers, newspaper notices and cemetery or crematory services while also stating on the same General Price List that the consumer will not pay a service charge for the Defendants' obtaining the flowers, newspaper notices and cemetery or crematory services.

15. The Defendants' Statement of Goods and Services does not disclose that the Defendants charge the consumer for their services in obtaining cash advanced items.

16. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to provide accurate information in the form price lists concerning cash advance items and consumers' options in purchasing cash advance items, as expressed and embodied in Conn. Gen. Stat. §§ 20-230a and 20-230b and 16 C.F.R. §§ 453.2 and 453.3 (f).

17. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumers.

18. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

TWELFTH COUNT

1-18. The allegations of paragraphs 1 through 18 of the Eleventh Count are incorporated herein as paragraphs 1 through 18 of the Twelfth Count.

19. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

THIRTEENTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Thirteenth Count.

14. On their General Price List, the Defendants failed to provide consumers with:

- a. a separate price for direct cremation where the purchaser provides the container;
- b. a flat fee for Direct cremation;
- c. a separate price for immediate burial where the purchaser provides the casket;
- d. a flat fee for immediate burial;
- e. a flat fee for the cost of forwarding remains to another funeral home;

and

- f. a flat fee for the cost of receiving remains from another funeral home.

15. In addition, on their Statement of Funeral Goods and Services, the Defendants failed to include the following disclosure statement: “If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.”

16. In addition, on their Outer Burial Price Lists, the Defendants failed to include the following disclosure statement: “. . . state, or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements.”

17. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to provide consumers with accurate and complete information in writing expressly disclosing all of the consumer’s options for different funeral services and merchandise, the availability and cost of all services and merchandise, and flat fees and specified price ranges for particular services and merchandise, as expressed and embodied in Conn. Gen. Stat. § 20-230a and 16 C.F.R. §§ 453.2(b)(4); 453.5 (b); 453.3(c).

18. The Defendants’ acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumer and others.

19. The Defendants’ acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

FOURTEENTH COUNT

1-19. The allegations of paragraphs 1 through 19 of the Thirteenth Count are incorporated herein as paragraphs 1 through 19 of the Fourteenth Count.

20. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

FIFTEENTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Fifteenth Count.

14. On their General Price List the Defendants imposed a duty on consumers to affirmatively request a casket and/or outer burial container price list.

15. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral services providers to provide price lists to consumers when discussing the specific services and merchandise offered and the related costs for each such service or merchandise item, as expressed and embodied in Conn. Gen. Stat. § 20-230a and 16 C.F.R. §§ 453.2(b)(2) through 453.2 (b)(4).

16. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumer and others.

17. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

SIXTEENTH COUNT

1-17. The allegations of paragraphs 1 through 17 of the Fifteenth Count are incorporated herein as paragraphs 1 through 17 of the Sixteenth Count.

18. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

SEVENTEENTH COUNT

1-13. The allegations of paragraphs 1 through 13 of the First Count are incorporated herein as paragraphs 1 through 13 of the Seventeenth Count.

14. Between 1996 and 2000, inclusive, consumers requested price lists from the Defendants, and the Defendants failed and refused to provide the same.

15. The aforementioned acts and practices of the Defendants violate the public policy that requires funeral service providers to provide price lists to consumers when discussing the specific services and merchandise offered and their cost, as expressed and embodied in Conn. Gen. Stat. § 20-230a, Conn. Reg. § 20-211-34, and 16 C.F.R. §§ 453.2(b)(2) through 453.2(b)(4).

16. The Defendants' acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury to consumers.

17. The Defendants' acts and practices as alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. 42-110b.

EIGHTEENTH COUNT

1-17. The allegations of paragraphs 1 through 17 of the Seventeenth Count are incorporated herein as paragraphs 1 through 17 of the Eighteenth Count.

18. Defendants have engaged in, and continue to engage in the aforementioned acts or practices alleged herein when they knew, or should have known, that their conduct was unfair or deceptive in violation of Conn. Gen. Stat. § 42-110b(a).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff claims the following relief:

1. An order pursuant to Conn. Gen. Stat. § 42-110m(a) enjoining each Defendant from further violation of Conn. Gen. Stat. § 42-110b(a).
2. An order pursuant to Conn. Gen. Stat. § 42-110m(a) directing each Defendant to pay restitution.
3. An order pursuant to Conn. Gen. Stat. § 42-110o(b), directing each Defendant to pay civil penalties for each willful violation of Conn. Gen. Stat. § 42-110b(a).
4. An order pursuant to Conn. Gen. Stat. § 42-110m(a), directing each Defendant to disgorge all revenue, profits and gains achieved in whole or in part through the unfair and/or deceptive acts or practices complained of herein.
5. An award of attorneys fees, pursuant to Conn. Gen. Stat. § 42-110m(a).
6. Costs of suit.
7. Such other and further relief as the Court deems appropriate.

The Plaintiff hereby states that the amount in demand is more than Fifteen Thousand Dollars (\$15,000), exclusive of interest and costs.

HEREOF FAIL NOT, BUT OF THIS WRIT, MAKE DUE SERVICE AND
RETURN, ACCORDING TO LAW.

Dated at Hartford, Connecticut this _____ day of _____, 2002.

PLAINTIFF
STATE OF CONNECTICUT

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: _____
THOMAS J. SAADI
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BY: _____
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