

IN THE COURT OF COMMON PLEAS
ROSS COUNTY, OHIO

2012 JAN 24 AM 11:13

STATE OF OHIO, ex rel.)
ATTORNEY GENERAL)
MICHAEL DeWINE)
30 EAST BROAD STREET, 14TH FLOOR)
COLUMBUS, OHIO 43215)

PLAINTIFF,)

V.)

THE SERENITY GROUP)
d/b/a Floral Hills Memory Gardens)
4284 US 23 S)
Chillicothe, OH 45601)

and)

RONALD DOWNEY)
9295 Allen Road)
Clarkston, MI 48348)

and)

JOSEPH MILLER)
6094 N. Beaune Rd.)
Ludington, MI 49431)

DEFENDANTS.)

CASE NO. 12CI00000560

JUDGE Afer

FILED
ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

**COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF,
RESTITUTION, AND CIVIL
PENALTIES**

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Attorney General of Ohio, Michael DeWine, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 et seq. (the Consumer Sales Practices Act).

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio and Ross County, as set forth below, are in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules, O.A.C. 109-4-3-01 et seq.
3. Defendants, as described below, are “suppliers” as that term is defined in R.C. 1345.01(C) as Defendants were, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling consumer goods and services in Ross County in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
4. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Consumer Sales Practices Act.
5. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Ross County, Ohio.

STATEMENT OF FACTS

6. The Serenity Group d/b/a Floral Hills Memory Garden (“Floral Hills”) is an Indiana corporation that has its principal places of business at 4284 US 23 S, Chillicothe, Ohio 45601.
7. Defendants own and operate two (2) cemeteries in the state of Ohio located at 4284 US 23 S, Chillicothe, Ohio 45601 and 17544 Little Walnut Road, Circleville, Ohio 43113.
8. Defendant Ronald Downey is an authorized representative and co-owner of Floral Hills who at all times relevant resided at 4284 US 23 S, Chillicothe, Ohio 45601.
9. Defendant Joseph Miller is an authorized representative and co-owner of Floral Hills who at all times relevant resided at 2 Bradford Drive, Chillicothe, Ohio 45601.

10. At all relevant times hereto, Defendant Downey and Defendant Miller operated, dominated, controlled and directed the business activities of Defendant Floral Hills, causing, personally participating in, and/or ratifying the acts and practices of Defendant Floral Hills.
11. Defendants are, and have been at all times relevant to this action, engaged in the business of soliciting, offering for sale, or selling funeral and burial goods and services in the State of Ohio, including in Ross County.
12. Defendants entered into, executed, and/or assumed contracts to provide funeral and burial goods and services to consumers in the State of Ohio.
13. Defendants accepted or assumed substantial down payments or payments in full from consumers for the purchase of funeral and burial goods and services.
14. Defendants failed to deliver goods or services ordered or allowed more than eight (8) weeks to elapse without delivering said goods or services or providing full refunds.
15. At all times relevant, Defendant Floral Hills was not registered with the Ohio Secretary of State to do business in the State of Ohio.
16. On or about May 2, 2011, Defendants entered into an Assurance of Voluntary Compliance (“AVC”) with the Plaintiff. [Exhibit A].
17. To date, Defendants have failed to comply with the AVC. Specifically, Defendants have failed to register with the Secretary of State in violation of Paragraph 14 of the AVC.
18. To date, Defendants have failed to comply with the Assurance of Voluntary Compliance. Specifically, Defendants have failed to negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with the Office concerning Defendants’ conduct in violation of Paragraph 26 of the AVC.

PLAINTIFF'S CAUSE OF ACTION
UNFAIR AND DECEPTIVE ACTS AND PRACTICES
COUNT I
FAILURE TO DELIVER

19. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Eighteen (1-18) of this Complaint.
20. Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and the Ohio Adm. Code 109:4-3-09(A)(1) by accepting or assuming substantial down payments for goods and services and failing to provide the goods and services or refunding the down payments.

- COUNT II**
FAILURE TO REGISTER WITH THE OHIO SECRETARY OF STATE
21. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Eighteen (1-18) of this Complaint.
 22. Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by failing to register with the Ohio Secretary of State.

- COUNT III**
FAILURE TO COMPLY WITH ASSURANCE OF VOLUNTARY COMPLIANCE
23. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Eighteen (1-18) of this Complaint.
 24. Defendants have committed unfair and deceptive acts or practices in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) by failing to comply with an Assurance of Voluntary Compliance entered into on May 2, 2011 by Plaintiff and Defendants.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants, jointly and individually, their agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in any consumer transactions in the State of Ohio, and from the sale or transfer of any business or personal assets, other than by an order of this Court, until such time as all judgments arising out of consumer transactions, including any judgment resulting from this action, are satisfied.
2. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants, jointly and individually, their agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act, R.C. 1345.01 et seq. and its Substantive Rules.
3. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff's Complaint violates the Consumer Sales Practices Act in the manner set forth in this Complaint.
4. ORDER Defendants jointly and severally liable for reimbursement to all consumers found to have been damaged by the Defendants' unfair and deceptive acts and practices for the full amount of any damages pursuant to R.C. 1345.07(B).
5. ORDER Defendants jointly and severally liable to pay Twenty-Five Thousand Dollars (\$25,000.00) to the Office of the Ohio Attorney General for attorney's fees and investigative costs as originally suspended in the May 2, 2011 AVC in Paragraph 28.

6. ASSESS, FINE AND IMPOSE upon Defendants, jointly and severally, a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
7. ORDER, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, Defendants to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation and sale of home improvement goods and services in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all records.
8. GRANT the Ohio Attorney General his costs in bringing this action.
9. ORDER Defendants to pay all court costs
10. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,
MICHAEL DeWINE
Attorney General


MELISSA S. SZOZDA (0083551)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
(614) 466-1306
(614) 466-8898 (fax)
melissa.szozda@ohioattorneygeneral.gov

Counsel for Plaintiff

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

STATE OF OHIO)
)
IN THE MATTER OF:) DOCKET NO. 424073
The Serenity Group of Ohio)
d/b/a Floral Hills Memory Gardens,)
Ronald Downey, individually, and)
Joseph Miller, individually.)

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 2nd day of May 2011 by Michael DeWine, Attorney General of the State of Ohio ("Attorney General"), Supplier The Serenity Group of Ohio d/b/a Floral Hills Memory Gardens ("Floral Hills"), an Indiana corporation, Supplier Ronald Downey ("Downey"), individually, and Supplier Joseph Miller ("Miller"), individually (together known as "Suppliers").

For purposes of this Assurance, "Suppliers" means Floral Hills under its own name or any other business names, its directors, owners, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership or association, Downey, and Miller, both individually and doing business under their own names or any other business names.

WHEREAS, the Attorney General, having reasonable cause to believe that Suppliers have engaged in acts and practices which violate Chapter 1345 of the Revised Code ("Consumer Sales Practices Act") and Chapter 109:4-3 of the Ohio Administrative Code ("Substantive Rules"), has conducted an investigation pursuant to the authority granted to him by R.C. 1345.06;



WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance;

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by Suppliers of their intent to conduct their business in a manner designed to comply with the provisions of the Consumer Sales Practices Act and Substantive Rules;

WHEREAS, Suppliers desire to comply with all aspects of the Consumer Sales Practices Act and Substantive Rules, Suppliers hereby voluntarily enter into this Assurance with the Attorney General;

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

- (1) The "Effective Date" shall mean the date that is indicated on the first page of this Assurance.
- (2) By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Suppliers' business practices and actions occurring on or before the Effective Date of this Assurance, unless new consumer complaints should arise relevant to that time period.
- (3) By giving this written Assurance, Suppliers agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act, R.C. 1345.01 et seq. and the Ohio Administrative Code, 109:4-3-01 et seq.

BACKGROUND AND STATEMENT OF FACTS

- (4) Floral Hills Memory Garden d/b/a The Serenity Group is an Indiana corporation that has its principal places of business at 4284 US 23 S, Chillicothe, Ohio 45601.

- (5) Floral Hills owns and operates two (2) cemeteries in the state of Ohio located at 4284 US 23 S, Chillicothe, Ohio 45601 and 17544 Little Walnut Road, Circleville, Ohio 43113.
- (6) Ronald Downey is an authorized representative and co-owner of Floral Hills who at all times relevant resided at 4284 US 23 S, Chillicothe, Ohio 45601.
- (7) Joseph Miller is an authorized representative and co-owner of Floral Hills who at all times relevant resided at 2 Bradford Drive, Chillicothe, Ohio 45601.
- (8) At all relevant times hereto, Downey and Miller operated, dominated, controlled and directed the business activities of Floral Hills, causing, personally participating in, and/or ratifying the acts and practices of Floral Hills.
- (9) At all times relevant, Suppliers were not registered with the Ohio Secretary of State to do business in the state of Ohio.
- (10) In some instances, Suppliers were not properly registered with the Ohio Department of Commerce, Division of Real Estate and Professional Licensing as a cemetery company.
- (11) Suppliers executed contracts to provide funeral and burial goods and services, including providing grave markers, to consumers throughout the State of Ohio.
- (12) Suppliers accepted substantial down payments from consumers for the purchase of goods or services.
- (13) Suppliers failed to deliver goods or services ordered or allowed more than eight (8) weeks to elapse without delivering said goods or services, specifically, Suppliers failed to provide grave markers to consumers.

COMPLIANCE PROVISIONS

- (14) Suppliers shall not fail to be registered with the Ohio Secretary of State to conduct business in the state of Ohio, in violation of the Consumer Sales Practices Act, R.C. 1345.02 (A).

- (15) Suppliers shall not fail to be properly licensed by the Ohio Department of Commerce, Division of Real Estate and Professional Licensing as a cemetery company, in violation of the Consumer Sales Practices Act, R.C. 1345.02 (A).
- (16) Suppliers shall refrain from accepting down payments for at-need funeral and burial goods or services and then failing to deliver those goods or services or allowing more than eight (8) weeks to elapse without delivering the goods or services or making a full refund of the down payments, in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and OAC 109:4-3-09.
- (17) Suppliers shall refrain from accepting down payments for pre-need funeral and burial goods or services and then failing to deliver those goods or services or allowing more than eight (8) weeks to elapse upon need without delivering the goods or services or making a full refund of the down payments, in violation of the Consumer Sales Practices Act, R.C. 1345.02(A) and OAC 109:4-3-09.

GENERAL PROVISIONS

- (18) Suppliers understand and agree this Assurance applies to their owners, principals, officers, directors, agents, servants, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, jointly and severally.
- (19) This Assurance shall be governed by the laws of the State of Ohio.
- (20) This Assurance is entered into by the Attorney General and Suppliers of their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.
- (21) This Assurance does not constitute an approval by the Attorney General of any of Suppliers' business practices, and Suppliers shall not represent directly or indirectly, or in

any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Suppliers' business practices.

- (22) This Assurance sets forth the entire agreement between the Attorney General and Suppliers and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
- (23) The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
- (24) Suppliers shall keep the Office of the Attorney General apprised of any changes in business address or telephone number by notifying the undersigned Assistant Attorney General within thirty (30) days of such change. If such Assistant Attorney General is unavailable, Suppliers shall notify another authorized agent or representative of the Office of the Attorney General, Consumer Protection Section.
- (25) Suppliers shall keep the Office of the Attorney General apprised of any new business filings related to the cemetery industry with the Ohio Secretary of State in which any supplier is named an officer or agent and any changes in name, address, or telephone number of such business by notifying the undersigned Assistant Attorney General within thirty (30) days of such change. If such Assistant Attorney General is unavailable, Supplier shall notify another authorized agent or representative of the Office of the Attorney General, Consumer Protection Section.

- (26) Suppliers shall negotiate in good faith, through the Office of the Attorney General, any consumer complaints filed with this Office concerning Suppliers' conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
- (27) This Assurance is a public record and shall be maintained in the Public Inspection File.

RESTITUTION AND PAYMENT TO THE STATE

- (28) As part of the consideration for the termination of the Attorney General's investigation of Suppliers under the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., Suppliers, jointly and severally, shall pay Twenty-Five Thousand Dollars (\$25,000.00) to the Office of the Ohio Attorney General for attorney's fees and investigative costs, of which Twenty-Five Thousand Dollars (\$25,000.00) shall be suspended upon full compliance with the terms of this AVC, including the consumer restitution provisions.
- (29) Suppliers, jointly and severally, shall provide full restitution, in the amount of Twelve Thousand, One Hundred Forty Five Dollars and 27/100 Cents (\$12,145.27) to be distributed to those consumers listed on Addendum A, attached, for their respective amounts within ninety (90) days of the Execution Date of this Assurance. Payment shall be made by delivering a certified check or money order, payable to the Ohio Attorney General's Office in the amount of Twelve Thousand, One Hundred Forty Five Dollars and 27/100 Cents (\$12,145.27) for distribution to consumers to:

Patricia Anderson, Administrative Secretary
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

- (30) In lieu of providing the restitution as required in Paragraph Twenty-Nine (29), Suppliers may fully deliver the goods and services ordered by consumers in Addendum A, to the

specifications of their respective contracts, within ninety (90) days of the Execution Date of this Assurance. Proof of purchase and installation must be forwarded to the Ohio Attorney General's Office, attention to the undersigned Assistant Attorney General, within ninety (90) days of the Execution Date of this Assurance.

PENALTIES FOR FAILURE TO COMPLY

- (31) The Attorney General may assert any claim that Suppliers have violated this Assurance in a separate civil action to enforce this Assurance against Suppliers and the court shall apply applicable standards of law to determine damages per any subsequent violations, which may include any and all remedies available to the Attorney General pursuant to R.C. 1345.07. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Suppliers do not waive any evidentiary objection or any other objection they may have as permitted by law to the admissibility of any such evidence, including, but not limited to, showing evidence that Suppliers have fully and promptly cooperated in good faith with this investigation.
- (32) Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the Consumer Sales Practices Act or the Substantive Rules adopted thereunder, by Suppliers. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the Consumer Sales Practices Act, R.C. 1345.01 et seq., if presented after the violation in an action brought under the Consumer Sales Practices Act, R.C. 1345.01 et seq.
- (33) This Assurance shall in no way exempt Suppliers from any other obligations imposed by law, and nothing contained herein shall relieve Suppliers of any legal responsibility for

any acts or practices engaged in by Suppliers other than those acts specifically resolved by this Assurance.

- (34) Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Suppliers under any legal authority granted to the Attorney General:
- (a) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (b) With respect to transactions or occurrences which are not the subject of this action.

REPRESENTATIONS AND WARRANTIES

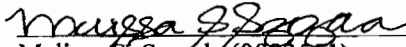
- (35) The Attorney General and Suppliers represent and warrant that they negotiated the terms of this Assurance in good faith.
- (36) Suppliers warrant and represent that the individual signing this Assurance on behalf of Floral Hills is doing so in his official capacity and is fully authorized by Floral Hills to enter into this Assurance and to legally bind Floral Hills to all of the terms and conditions of the Assurance.

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 2nd day of May 2011.

SIGNATURES 1 of 2

Accepted:

**MICHAEL DEWINE
ATTORNEY GENERAL**

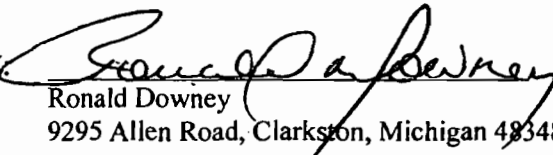
BY: 
Melissa S. Szozda (0083551)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-6112

5/2/2011
Date

Attorney for the Ohio Attorney General

Accepted:

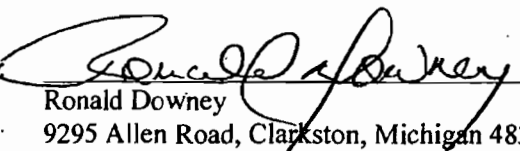
The Serenity Group of Ohio

BY: 
Ronald Downey
9295 Allen Road, Clarkston, Michigan 48348-2726

3/4/2011
Date

Authorized representative and co-owner, The Serenity Group of Ohio d/b/a Floral Hills Memory Gardens

Ronald Downey, individually

BY: 
Ronald Downey
9295 Allen Road, Clarkston, Michigan 48348-2726

3/4/2011
Date

SIGNATURES 2 of 2

Accepted:

**MICHAEL DEWINE
ATTORNEY GENERAL**

BY: Melissa S. Szozda
Melissa S. Szozda (0083551)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 466-6112

5/2/2011
Date

Attorney for the Ohio Attorney General

Accepted:

The Serenity Group of Ohio

BY: Joseph Miller
Joseph Miller
5048 Golden Eagle Drive, Grand Prairie, Texas 75052

03/04/2011
Date

Authorized representative and co-owner, The Serenity Group of Ohio d/b/a Floral Hills Memory Gardens

Joseph Miller, individually

BY: Joseph Miller
Joseph Miller
5048 Golden Eagle Drive, Grand Prairie, Texas 75052

03/04/2011
Date

In the matter of The Serenity Group d/b/a Floral Hills Memory Garden

ADDENDUM A

CONSUMER RESTITUTION

Name	Cemetery Location	Amount
Baldwin, Jeanette	Chillicothe	\$2,726.00
Benson, Teresa	Chillicothe	\$2,600.00
Fowler, Dennis	Chillicothe	\$3,000.00
Tisdale, June	Chillicothe	\$2,800.00
Wright, Hersheline	Chillicothe	\$1,019.27
		Total \$12,145.27