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August 2, 1999

Secretary, Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW
Washington, DC 20580

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Re: "16 CFR Part 453"

Dear Secretary:

The Funeral Rule should not be expanded to include cemeteries for the following reasons:

1. The Federal Trade Commission (FTC), in its Statement of Basis and Purpose for the Funeral Rule, "unambiguously established that funeral director practices were the focus of the rulemaking proceedings,"
2. In its Recommendations, FTC staff concluded that cemeteries do not engage in the types of abuses addressed by the Rule. "The great majority of the few consumer complaints to the Commission, the AARP, and state and industry regulators about cemetery practices do NOT relate to Funeral Rule-related abuses, but to such things as gravesite maintenance and liquidation of cemetery property."
3. Due to the fact that funeral homes must comply with the Funeral Rule, they contend that it is only "fair" that cemeteries do likewise. This rationale would deny cemeteries their Constitutional right of due process and create procedural "unfairness." FTC procedures require that the Funeral Rule can be amended only "if supported by reliable, substantial evidence in the rulemaking record" justifying such action. To date, there is no substantial evidence in the FTC rulemaking record or elsewhere indicating that there are widespread, unfair, or deceptive cemetery practices to establish a reasonable basis for Rule expansion.
4. Certain interested parties advocating Rule expansion to cemeteries claim to want "a level playing field." However, funeral homes and cemeteries sell substantially different goods and services to the public, operating on "two different playing fields." Of the sixteen goods and services required to be listed on the Rule's General Price List, only one item (outer burial containers) is commonly sold by both funeral homes and cemeteries. Even then, there is an important distinction: Unlike funeral homes that generally sell outer burial containers at need, cemeteries generally sell this item on a preneed basis where consumers can comparison shop and prices are disclosed far in advance of making any decision to buy.
5. The majority of cemeteries are not-for-profit entities, many of which are either religious or government-owned. Historically, these religious and government cemeteries are exempted from state laws governing commercial cemeteries and, presumably, would be exempt from an extension of the Funeral Rule. Due to these jurisdictional issues, the Rule is an inappropriate regulatory vehicle to apply to the small number of cemeteries remaining.

Respectfully,

John E. Carpenter
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Diocesan Director