

**IN THE CIRCUIT COURT FOR
FAYETTE COUNTY, ALABAMA**

WALTER A. BELL, as Commissioner)
of the ALABAMA DEPARTMENT)
OF INSURANCE,)
)
Plaintiff,)
)
v.)
)
WEST ALABAMA MEMORIAL)
GARDENS, INC., an Alabama corporation,)
HERITAGE MONUMENT COMPANY, INC.,)
an Alabama corporation,)
HERITAGE MEMORIAL GARDENS, INC.,)
an unincorporated association, and)
FLOYD W. BUSH, both individually and d/b/a)
WEST ALABAMA MEMORIAL)
GARDENS, INC., HERITAGE MONUMENT)
COMPANY, INC., and HERITAGE)
MEMORIAL GARDENS, INC.,)
)
Defendants.)

Civil Action Number

TEMPORARY RESTRAINING ORDER

This matter came before the court on the verified complaint (the "Complaint") filed by Walter A. Bell ("Bell") in his capacity as Commissioner of the State of Alabama Department of Insurance (the "Department"). This court has considered the allegations in the Complaint and, based on those allegations, makes the following findings of fact and reaches the following conclusions of law.

1. Bell is Commissioner of the Alabama Department of Insurance. Pursuant to §27-2-7(2) of the Alabama Code, Bell is authorized to enforce the provisions of Title 27 of the Alabama Code (the "Insurance Code"). Section 27-2-7(7) of the Alabama Code authorizes Bell to invoke any legal, equitable, or special remedy to enforce the Insurance Code.

2. West Alabama is a corporation organized and existing under the laws of the State of Alabama. West Alabama's principal place of business is in Fayette, Alabama.

3. Heritage Monument is a corporation organized and existing under the laws of the State of Alabama. Heritage Monument conducts or has conducted business and owns or has owned real and personal property in the State of Alabama.

4. Heritage Memorial is an unincorporated association of individuals. Heritage Monument conducts or has conducted business and owns or has owned real and personal property in the State of Alabama.

5. Bush is an individual resident of the State of North Carolina. Bush has been president of West Alabama and has been an employee or agent of Heritage Monument and Heritage Memorial. The acts that serve as the basis of the relief sought against Bush concern his activities within the State of Alabama.

6. This court has subject matter jurisdiction over this civil action pursuant to §§27-17A-17 and 27-32-3 of the Alabama Code. This court can also properly exercise personal jurisdiction over each of the defendants.

7. This court finds that, at a trial on the merits, it is substantially likely Bell will be able to prove:

(A) West Alabama, Heritage Monument, Heritage Memorial, and Bush have engaged in a pattern and practice of violating the Alabama Preneed Funeral and Cemetery Act (the "Act") by, among other things, selling preneed cemetery merchandise and services without a certificate of authority from the Department and failing to deposit into trust funds received from consumers on account of preneed contracts.

(B) West Alabama, Heritage Monument, Heritage Memorial, and Bush do not have the funds necessary to cure the delinquency in the deposits they were to make to a cemetery merchandise and services trust fund under the Act.

(C) West Alabama, Heritage Monument, Heritage Memorial, and Bush do not have the funds necessary to establish and properly contribute to an endowment care trust fund as required by the Act and, as a consequence, there are not sufficient funds to maintain and care for the cemeteries either currently or formerly owned or operated by the defendants.

(D) West Alabama, Heritage Memorial, and Bush are defendants in a civil action in which the plaintiffs seek to recover damages from them as a result of, among other things, the defendants' failure to provide cemetery merchandise and services called for by preneed contracts they entered.

(E) West Alabama and Bush have both been the subject of bankruptcy proceedings that have now been dismissed.

(F) West Alabama, Heritage Monument, Heritage Memorial, and Bush formerly owned or operated four cemeteries located in Fayette County, Alabama, Marion County, Alabama, and Pickens County, Alabama. The defendants have abandoned these cemeteries and do not supervise burials at the cemeteries or provide even basic maintenance of the cemetery grounds.

(G) The continued operation of the cemetery operations of West Alabama, Heritage Monument, Heritage Memorial, and Bush would be hazardous to purchasers, beneficiaries, and the people of this state, thus requiring the appointment of a receiver for those businesses pursuant to §27-17A-17(b) of the Alabama Code.

(F) West Alabama, Heritage Monument, Heritage Memorial, and Bush are insolvent, thus requiring the appointment of a receiver for their businesses pursuant to §§27-17A-17(b) and 27-32-6(1) of the Alabama Code.

(G) West Alabama, Heritage Monument, Heritage Memorial, and Bush have willfully violated laws of this state, thus requiring the appointment of a receiver for their businesses pursuant to §§27-17A-17(b) and 27-32-6(6) of the Alabama Code.

It is, therefore, **ORDERED, ADJUDGED, and DECREED** that:

8. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from taking, removing, concealing, selling, encumbering, lending, damaging, destroying, or otherwise disposing of any and all property, real, personal, and otherwise, owned, leased, or used by West Alabama, Heritage Monument, Heritage Memorial, or Bush in connection with the sale of cemetery merchandise or services as those terms are defined in the Act.

9. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from taking, spending, transferring, concealing, lending, or otherwise disposing of any money or funds, whether in the form of cash, checks, debits to accounts, credit cards, lines of credit, loans, letters of credit, extensions of credit, accounts, obligations, debts, credits, proceeds from the sale of goods or services, or any other form whatsoever owned, claimed, or used by West Alabama, Heritage Monument, Heritage Memorial, or Bush in connection with the sale of cemetery merchandise or services as those terms are defined by the Act.

10. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from concealing, hiding, transferring, altering, amending, removing, destroying, or otherwise disposing of any and

all business and financial information, records, and documents pertaining to, relating to, or reflecting, in any way, the business and financial affairs of West Alabama, Heritage Monument, Heritage Memorial, or Bush with regard to sales of cemetery merchandise and services as those terms are defined in the Act.

11. Pursuant to §§27-32-1 through 41 and 27-2-53 of the Alabama Code, Denise Azar (“Azar”), Chief of the Receivership Division of the Department, is hereby temporarily appointed to be the receiver of West Alabama, Heritage Monument, Heritage Memorial, and Bush. Azar is directed and is authorized to immediately take possession of the assets of Charter and Grant related to the sale of cemetery merchandise and services and shall administer those assets under the orders of this court for the purpose of attempting to dissolve, liquidate, and conserve them. Azar is further directed and authorized to investigate the business and financial affairs of West Alabama, Heritage Monument, Heritage Memorial, and Bush as they relate to the sale of cemetery merchandise and services and to report the results of this investigation to this court.

12. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from interfering with, hampering, slowing, obstructing, or otherwise impeding Azar and her deputies, employees, agents, and others acting under her direction or control from discharging their duties and carrying out their responsibilities as receiver.

13. Any and all banks, credit unions, brokerage firms, and any and all financial institutions of any kind, character, or nature whatsoever with which West Alabama, Heritage Monument, Heritage Memorial, or Bush now have or have had accounts or deposits are hereby authorized and directed to provide Azar with any and all information she might request concerning such accounts or deposits for any period of time Azar deems necessary.

14. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from withdrawing funds from, writing checks on, or otherwise spending, transferring, or drawing against funds located in any account or deposit of which West Alabama, Heritage Monument, Heritage Memorial, or Bush is an owner that are connected, in any way with the sale of cemetery merchandise or services **except** in accordance with specific guidelines to be established by Azar in her discretion.

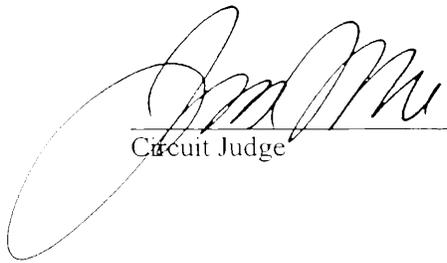
15. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and their officers, directors, stockholders, agents, employees, and any and all other persons in active concert or participation with them, Bush, and any and all other individuals and entities are hereby restrained and enjoined from drawing on, charging on, charging against, or otherwise utilizing any letter of credit, line of credit, credit account, credit card, or otherwise incurring either short term or long term debt that is, in any way, connected with the sale of funeral merchandise or services **except** in accordance with specific guidelines to be established by Azar in her discretion.

16. Pursuant to §§27-17A-17(a) and 27-32-5 of the Alabama Code, all persons and other legal entities, except the plaintiff, are hereby temporarily restrained and enjoined from making claims or commencing or further prosecuting any actions in law or equity or administrative proceedings except in this court, from obtaining any preferences, judgment, attachments, or other liens against any of the property, personal or real, of , from commencing or continuing any action in the nature of an attachment, garnishment or execution against any of the property, real or personal, of West Alabama, Heritage Monument, Heritage Memorial, or Bush, or from making any levy, garnishment, or execution against any of the property, real or personal, of West Alabama, Heritage Monument, Heritage Memorial, or Bush.

17. Pursuant to §27-32-4 of the Alabama Code, West Alabama, Heritage Monument, Heritage Memorial, and Bush are hereby directed to appear on ^{April} ~~March~~ ^{8th}, 2005, at 10:00 o'clock, A. m. in Fayette at the Fayette County Courthouse, Fayette, Alabama, to show cause why a preliminary or permanent injunction should not be issued continuing this temporary restraining in effect on the same or additional or different terms and conditions.

18. West Alabama, Heritage Monument, Heritage Memorial, and Bush are hereby directed to pay the costs of this action and any further proceedings related to a receivership, including reasonable attorney's fees, and costs and expenses involved therein.

Done this 29 day of March, 2005.



Circuit Judge