

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION
No.

COOPERATIVE FUNERAL)
 FUND, INC.,)
 Plaintiff,)
)
 v.)
)
 BOARD OF REGISTRATION IN)
 EMBALMING AND FUNERAL)
 DIRECTING,)
 Defendant.)

**VERIFIED
COMPLAINT**

**Preliminary Injunctive
Relief Requested**

PARTIES

1. Cooperative Funeral Fund, Inc. (“CFF”) is a Massachusetts corporation with a principal place of business in Madison, Connecticut. CFF is engaged in the business of facilitating the creation, investment, tax compliance and payout of “pre-need funeral trusts”, whereby individuals prepay all or part of their projected funeral expenses. CFF serves as an investment advisor to the trustee bank holding Massachusetts pre-need trust funds.

2. The Board of Registration in Embalming and Funeral Directing (the “Board”) is an administrative agency created by G. L. c. 13, § 29, operating under the supervision of the Division of Professional Licensure. The Board’s stated jurisdiction is the examination and licensing of funeral homes, funeral directors, embalmers and their apprentices. (G.L. c. 112 § 83.)

3. The Board is comprised of five appointed members, four of whom are experienced funeral directors and one of whom is a public member. To be a member, all that is required is five years funeral directing and embalming experience. A member is not required to have any financial or trust experience or knowledge. The current members of the Board are: Kathy Cartmell-Sirrico (acting Chair), Ralph A. Barile (Member), Edward Mazur (Member), and Judith McCarthy (Public Member).

4. The Board consists of only four members due to the recent death of John J. Kazlauskas. Mr. Kazlauskas was the Board's Chairman at the time the Regulations at issue in this case were adopted. Until Mr. Kazlauskas' death, Ms. Cartmell-Sirrico was the Board's Secretary.

Summary of the Action

5. The Board has enacted, interpreted and now seeks to enforce regulations, 239 CMR 4.00 et seq. (the "Regulations"), concerning pre-need trusts in such a manner that will effectively terminate CFF's ability to do business in Massachusetts, irreparably damaging its reputation in Massachusetts and nationwide, placing in peril the licenses of over 115 Massachusetts funeral homes and calling into question the status of over 7,000 individual pre-need trust accounts. In sum, the Board's interpretation of its Regulations and its subsequent enforcement prohibits pre-need trustee banks from seeking the advice and assistance of investment advisors such as CFF. CFF's sole business function is as an investment advisor to trustee banks holding pre-need trust funds. CFF is not an entity regulated by the Board and thus has no right to appear before the Board to present its case or appeal a Board's decision. The Board has issued Notices to approximately twenty-five (25) of CFF's funeral homes to appear before it for "Investigative Conferences" on April

27, 2005, scheduled only five minutes apart. As the number and frequency of these Conferences alone underscore, these conferences are a sham and not intended to gather information, since all of the information concerning CFF's pre-need trust program is known to the Board. The Board has already taken the position that CFF may not serve as an investment advisor for pre-need trusts in Massachusetts and thus every funeral home that uses CFF's services is operating in violation of the Board's Regulations. By this action CFF seeks:

- a. To preliminarily enjoin the Board from conducting its Investigative Conferences with CFF's funeral home clients concerning CFF, from noticing any additional conferences or from otherwise taking the position that CFF's pre-need trust program violates the Board's Regulations, until such time as the Court can render a decision as to the validity, scope and proper interpretation of these Regulations;
- b. To declare that pre-need trustee banks within the Commonwealth are permitted to use outside investment advisors; or in the alternative,
- c. To declare that the Board's Regulations as to pre-need funeral trusts, as a whole exceed the authority of the Board, as the Board has no authority over banks, trusts or investment advisors, and thus the Regulations are invalid;
- d. To declare that there is no rational or legitimate administrative basis for the Board's interpretation of its Regulations as prohibiting trustee banks from using investment advisors; and

- e. To declare that CFF's constitutional right of due process has been violated by the actions and conduct of the Board and enter judgment appropriate to protect such rights.

BACKGROUND

6. A pre-need trust agreement is one in which an individual has established a funeral trust account used to pay funeral expenses upon the beneficiary's death. CFF contracts with funeral homes in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Maryland and Tennessee ("CFF funeral homes") to manage all aspects of the process by which an individual may prepay for a funeral. Specifically, in Massachusetts, pursuant to a "pre-need trust agreement" offered by a funeral home to its individual clients, CFF creates a trust account with Wachovia Bank and invests the funds received in financial instruments that are guaranteed by the Federal Deposit Insurance Corporation ("FDIC") or directly by the United States government.

7. CFF manages \$36 million dollars in trust for its 115 Massachusetts funeral home clients, and nationally manages \$185 million dollars in trust.

8. CFF prepares and files all forms required by the Internal Revenue Service, provides the bank and the funeral directors with detailed monthly reports showing beginning balance, all interest allocation, expenses and fees, additional deposits, withdrawals, and ending balance for each individual escrow account. CFF reports regularly to each funeral director and reports to the trustee banks for the fund in totality. Periodically CFF's trust accounts are reviewed by an independent certified public accountant. For trust funds derived from the 115 Massachusetts CFF funeral homes,

CFF, in its capacity as an investment advisor, invests those funds solely in government securities and has contracted with Wachovia Bank to serve as trustee.

9. The objective of CFF's pre-need trust program is to provide maximum security to the principal placed in escrow and to pace inflation for the rising cost of funerals. CFF and its President are registered with the United States Securities and Exchange Commission as investment advisors.

10. As an entity and individual registered with and regulated by the SEC, CFF and its President are subject to the enforcement authority of the SEC and must make disclosures concerning CFF's financial condition and investment policies. CFF is required to maintain for inspection ledgers, journals and records concerning disbursements, assets, investments, liabilities, reserves, capital income, expenses, client accounts and transactions.

11. Wachovia Bank holds title to the trust securities. Wachovia is a federally chartered banking institution within the Commonwealth of Massachusetts having trust powers, and maintains its Massachusetts office at 200 Berkley Street, Boston.

12. Since its founding in 1989, CFF has never had a loss or suffered any regulatory penalty or discipline of any kind.

13. On information and belief, CFF is one of only three major providers (those with over \$25 million in trust providing accounting and tax reporting services to the individual funeral homes) of pre-need funeral trust agreements in Massachusetts, the others being BankNorth and the New England Funeral Trust.

14. On information and belief, BankNorth manages approximate \$45 million in trust and the New England Funeral Trust manages approximate \$100 million in trust.

15. The New England Funeral Trust is owned and operated by the members of the Massachusetts Funeral Directors Association (the “MFDA”).

16. The New England Funeral Trust is managed by Cambridge Savings Bank. On information and belief, Cambridge Savings Bank pays the MFDA a percentage of its pre-need trust fees.

17. Only dues-paying MFDA members can participate in the New England Funeral Trust pre-need plan.

18. As such, the MFDA benefits from the growth of the New England Funeral Trust twice – by the increase in dues and the increase in fees paid by Cambridge Savings Bank.

19. The Board’s authority is limited to the registration and certification of embalmers, funeral directors, apprentices and funeral homes (G.L. c. 112, §83). The Board has no authority to regulate banks, trusts, investment advisors or securities or, for that matter, any person or entity other than licensed funeral directors, embalmers, apprentices or funeral homes.

20. In June of 2004 the Board passed new rules regulating pre-need agreements, codified at 239 CMR § 4.00 et seq., which Regulations were retroactive to January 1, 2004.

21. On information and belief, these new Regulations were lobbied for, sponsored by, and drafted by MFDA and its lawyers.

22. On information and belief, the MFDA attorneys, Choate Hall & Stewart, were paid by the MFDA and, as attorneys for the MFDA, have an obligation to look after and promote the best interest of its client, the MFDA and its New England Funeral Trust.

23. The Board did not seek opinion or input from CFF, and in fact did not even notify CFF concerning the proposed new regulations, despite CFF's substantial presence and interest in the limited field of pre-need trusts, and despite that fact that, in 1988, CFF's President participated in the drafting of the prior legislation at the request of the then Secretary of Consumer Affairs, Paula Gold.

24. In fact, CFF did not learn of the new Regulations until after the expiration of the public comment period.

25. On information and belief, at the time the Regulations were enacted, at least two of the Board's four funeral director members were also members of the MFDA and both of those Board members offered their clients pre-need trusts through the New England Funeral Trust, CFF's main competitor.

26. On information and belief, as members of the MFDA, those Board members are owners of the New England Funeral Trust and thus had a personal interest in the enactment of such legislation, which legislation directly benefits the New England Funeral Trust.

27. Pursuant to the new Regulations set forth in 239 CMR §4.01, a "Funeral Trust Account" is defined as an account established in any federal or state chartered bank institution having trust powers, or any trust company, located in the Commonwealth of Massachusetts, in which funds are deposited or invested pursuant to terms of a pre-need funeral contract for the purpose of paying for funeral goods and/or services at a future time.

28. Pursuant to the same Regulations, a "Trustee" of a funeral trust account is defined as "a federal or state-chartered banking institution within the Commonwealth of

Massachusetts having trust powers, or a trust company within the Commonwealth of Massachusetts, to which funds have been transferred in a trust for the purpose of paying for funeral goods and/or services for a named beneficiary, and which is charged with the fiduciary duty of managing and administering those funds for the benefit of that named beneficiary.”

29. CFF has a standard trust agreement with Wachovia Bank that it uses, with some modifications, in the states in which it operates. In light of the imposition of these new Regulations, CFF revised an existing Wachovia trust agreement used in Pennsylvania. The Pennsylvania trust agreement was designed to hold insurance policies within the trust. As Wachovia simply holds these insurance policies and does not manage or administer the funds secured by the policies, the Pennsylvania trust agreement included language that states that Wachovia as trustee has no fiduciary responsibilities. In modifying the Pennsylvania trust agreement, CFF inadvertently failed to alter or remove this language. CFF has repeatedly offered to alter or remove this language if its trust agreement is otherwise found by the Board to be in compliance with its Regulations.

30. On information and belief, sometime before December of 2004, the members of the Board who use and are owners of the New England Funeral Trust by virtue of their MFDA membership began a clandestine investigation of CFF’s pre-need trust agreement.

31. Despite her membership on the Board and her position as acting Chairman, the investigation of CFF was inexplicably hidden from Ms. Cartmell-Sirrico, who opts not to use the New England Funeral Trust and instead uses the competing CFF product.

32. CFF was not given notice of the investigation.

33. On December 23, 2004, CFF unofficially learned that it was being investigated by some of the Board members and that these Board members were preparing to send notice to each CFF funeral home, and perhaps every Massachusetts funeral home, that CFF was not in compliance with the Board's Regulations and instructing the funeral homes to cease doing business with CFF.

34. CFF immediately contacted the Board's counsel, Christopher Carroll, asking to meet informally with Mr. Carroll to discuss CFF's trust agreement. In response to this call, the Board sent CFF a "Notice of Investigative Conference," stating that the purpose of the conference was to discuss pre-need funeral contracts issued by CFF.

35. Despite the lack of apparent authority of the Board to issue such a notice to CFF, CFF agreed to appear for the conference. On several occasions, by telephone and letter, counsel for CFF tried to contact Mr. Carroll to determine the scope and purpose of the investigation. Mr. Carroll was unresponsive to CFF's counsel's inquiries.

36. CFF was informed that the conference would be an informal meeting between CFF and Mr. Carroll and the Board's investigators, John Bresnahan and Jerry DeCristofaro. This conference, however, turned out to be anything but informal, as at least eleven people were present on behalf of the Board (some of whom were never introduced or identified to CFF and its counsel), including Linda Grasso, Deputy Director of Enforcement of the Division of Public Licensure, and two of the three remaining funeral director Board members (Ms. Cartmell-Sirrico having recused herself).

37. At the meeting, CFF presented an opinion letter from Charles Rounds, Esq., a distinguished professor of law, author of eleven editions of *Loring a Trustee's*

Handbook, and a frequent lecturer and authority on trusts and fiduciary relations. The opinion letter finds that, notwithstanding the inadvertent language concerning the bank's fiduciary responsibilities, the trust agreement did, in fact, comply with the mandates of 239 CMR 4.01. Specifically, Mr. Rounds found upon review of the trust document and the Board's Regulations that "a trust account established incident to the Agreement is a Fiduciary Trust Account that satisfies the requirements of the rules and regulations of the Massachusetts Board of Registration of Funeral services relating to pre-need funeral contracts." A copy of Professor Rounds' opinion letter is attached hereto as Exhibit "A."

38. Also at that meeting, CFF invited the Board's investigator, John Bresnahan, to inspect CFF's system and accounting practices as well as bank statements showing individual beneficiaries, which inspection occurred in February 2004.

39. The inspector, whose regular duties are to inspect funeral homes and investigate embalmer, funeral director and funeral home compliance, arrived with Mr. Carroll. CFF made available to Mr. Bresnahan and Mr. Carroll all relevant accounting and trust records, showing each individual Massachusetts trust account managed by CFF.

40. Neither Mr. Carroll nor Mr. Bresnahan, then or thereafter, stated any concerns or criticisms of CFF's accounting or investment practices or trust duties.

41. On information and belief, Mr. Bresnahan is a former funeral home director with no expertise or experience in the area of fiduciary accounting or trust responsibilities.

42. After the January 11th meeting and since Mr. Carroll's and Mr. Bresnahan's visit to CFF, CFF requested that the Board disclose to CFF whether CFF

complies with the Board's view of the Regulations other than the inadvertent and inoperative language with respect to the fiduciary duties of Wachovia.

43. Specifically, CFF's counsel placed at least five telephone calls to Mr. Carroll seeking Board guidance and feedback.

44. Because of the Board's refusal to communicate with CFF, CFF's President requested a meeting with Linda Grasso, the Division of Professional Licensure General Counsel and Deputy Director of Enforcement, to discuss CFF's pre-need trust program.

45. The meeting was originally scheduled for Wednesday, April 6, 2005

46. Ms. Grasso postponed the meeting until Wednesday, April 13, 2005.

47. On April 11, 2005, two days before the rescheduled meeting and five days after the original scheduled date, the Board, excluding Ms. Cartmell-Sirrico, sent a notice to approximately twenty-five of CFF's funeral home clients demanding that they appear before the Board to discuss their pre-need funeral contracts, and that they bring with them certain pre-need trust records. A sample Notice is attached hereto as Exhibit "B".

48. All of the information sought by these notices has already been voluntarily made available and provided to the Board by CFF. As there exists no "investigative" purpose to these "Investigative Conferences," the only purpose of these conferences could be to harass and intimidate the noticed funeral homes, to harm CFF's business and reputation and to help the New England Funeral Trust secure new clients and the MFDA new members.

49. Upon inquiry to the Board, funeral directors who received these notices were informed that this was part of a "random" and "general" audit.

50. However, this position is contradicted by the fact that, had this in fact been a “random” or “general” audit of all pre-need contracts, and not just CFF’s pre-need contract, would have been known and authorized by the full Board. Ms. Cartmell-Sirrico, the Board’s acting Chair and the only Board member in CFF’s program, not only was unaware of her own Board’s actions, she in fact received a Notice of Investigative Conference on behalf of her funeral home.

51. The Board’s position that these notices were sent out as a part of a random or general audit is further contradicted by the fact that, on information and belief, only CFF funeral homes have received notices to appear before the Board.

52. The Board’s website notes that, for the fiscal year 2003, it conducted just one Investigative Conference.

53. On information and belief, the Board has now sent approximately twenty-five (25) notices directed only to CFF funeral homes. All of these conferences are scheduled at five or ten-minute intervals on April 27, 2005.

54. The notices advise the CFF funeral homes that failure to comply with the Board’s request may result in an Order to Show Cause and the convening of a “Formal Adjudicatory Hearing,” imperiling the license of each CFF funeral home.

55. At the April 11, 2005 meeting, Ms. Grasso was accompanied by Jerry DeCristofaro, Christopher Carroll, John Bresnahan and Cathy Mullaly, Chief Legal Counsel to the Division of Public Licensure.

56. CFF’s President, who attended the meeting alone, asked Ms. Grasso about the status of the Board’s investigation of CFF’s pre-need plan, and what issues, if any, the Board felt needed to be addressed.

57. Ms. Grasso responded that it was not her place to give CFF legal advice, but further stated that the trustee bank itself, not an investment advisor such as CFF, should be doing all the work as the “Regulations are quite clear,” they “do not envision” the use of outside investment advisors.

58. Ms. Grasso did not state where in the Regulations use of investment advisors is prohibited nor did she articulate what legitimate purpose was served by denying trustee banks from seeking advice from qualified and regulated investment advisors.

59. Ms. Grasso, purporting to speak for the Board, stated that CFF cannot do “funeral home business” in Massachusetts, but could do other business in Massachusetts. As Ms. Grasso and the Board are well aware, CFF only does “funeral home business” in Massachusetts, as its sole function is to establish pre-need funeral trusts and service those accounts.

60. It is well settled under Massachusetts law that trustees are not only permitted to retain investment advisors, but owe a duty to the beneficiary to obtain and utilize investment advice when needed.

61. On information and belief, the Board has already determined, without reviewing any of the materials provided by CFF and without providing CFF an opportunity to appear before it, argue its case, or appeal the Board’s decision, that CFF is not compliant with the Board’s Regulations, as the Board interprets them to bar the use of investment advisors. So long as the Board interprets its Regulations to prohibit trustee banks from using investment advisors, CFF, by the very nature of its business, would be

in violation of the Board's Regulations and thus would effectively be put out of business in Massachusetts.

62. On information and belief, Board investigator Jerry DeCristofaro informed a funeral director that CFF was "not licensed to do business" in Massachusetts and that its programs did not comply with the Board's Regulations. DeCristofaro made this statement prior to the issuance of the Notices of Investigative Conferences.

63. On information and belief, Board investigator John Bresnahan strongly encouraged a funeral director (who had indicated that he was about to contract with CFF for pre-need services) to use the MFDA's New England Funeral Trust rather than CFF, going so far as to provide that funeral director with the MFDA's New England Funeral trust telephone number.

64. As these comments reflect, these so-called "Investigative Conferences" are nothing more than a sham as the Board has already determined, without due process or a right to be heard, that CFF's program is in violation of the Board's Regulations and thus the funeral directors themselves are not in compliance.

65. The Board's conduct will cause catastrophic damage to CFF. CFF will be eliminated as a provider of pre-need funeral trusts in Massachusetts, destroying, without an opportunity to be heard or appeal, CFF's \$36 million dollar Massachusetts business and long-standing valuable reputation and goodwill.

66. Such conduct will also leave in jeopardy over 7,000 existing individual pre-need trusts and will place in peril CFF's entire \$186 million dollar national business and reputation. It will also render 115 funeral homes presumably in violation of the

Board's Regulations, jeopardizing their license to operate in Massachusetts as well as their tarnishing their reputations and goodwill.

67. The direct beneficiary of the Board's willful, arbitrary, capricious and unchecked action will be the New England Funeral Trust, in which certain of the Board members have a personal interest.

68. As CFF is not a registered funeral home or certified as a funeral director or embalmer, CFF does not have to right to a public hearing before the Board as set forth in c. 112 § 84, nor does it have the right to bring petition to the Court, through the Administrative Procedures Act, G.L. c. 231A, to appeal an action by the Board. As such, CFF has no available administrative remedy or rights.

COUNT I

Preliminary Injunctive Relief

69. CFF repeats and realleges the allegations of paragraphs 1 through 68 as though set forth in full herein.

70. The Board's actions and threatened action, and its stated interpretation of its Regulations with respect to investment advisors, poses an actual, viable threat of substantial and irreparable harm to CFF's business and reputation as well as a threat to the 7,000 open Massachusetts pre-need trust accounts currently managed by CFF and a threat to the licensure and reputation of each of the 115 CFF funeral homes.

71. Should CFF be effectively terminated as a pre-need funeral trust provider and investment advisor, CFF's entire national business reputation will be irreparably tarnished, which harm could not be undone or remedied by money alone.

72. As the Board's actions as set forth above are arbitrary and improperly motivated, as the Board's interpretation of its Regulations is not supported by the language of Regulations and are outside the scope of Board's limited authority, and as there exists no rational basis for the Board to prohibit trustee banks from using the services of investment advisors, CFF has a substantial likelihood of success on the merits.

73. Conversely, there is no compelling harm in prohibiting the Board's implementation of its interpretation of the Regulations prior to consideration and judgment by this Court.

74. As such, CFF seeks the issuance of a preliminary injunction barring the Board, prior to adjudication of the issues by this Court, from conducting "Investigative Conferences" concerning CFF's pre-need funeral trusts, and barring the Board from taking the position that (1) CFF cannot provide pre-need trust services to funeral homes in Massachusetts, (2) that investment advisors are forbidden under the Regulations, and that (3) CFF's pre-need trust program does not comply with the Board's Regulations. Preliminary injunctive relief will protect not only CFF's business and reputation, but will also protect the 115 CFF funeral homes in jeopardy of losing their license and the 7,000 individual CFF pre-need trust accounts.

COUNT II
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Enjoining The Board from Conducting Investigative Conferences or Disseminating Further Notices or Communications Concerning CFF's Pre-Need Trust Services

75. CFF repeats and realleges the allegations of paragraphs 1 through 74 as though set forth in full herein.

76. The actions and comments of the Board, its counsel, and its investigators demonstrate that the Board has already predetermined that pre-need investment advisors are not permissible under its Regulations and thus CFF's pre-need trust program is a violation of the Board's regulations.

77. As the Board has already reviewed and been provided the information sought in the so-called "Investigative Conferences", these conference are nothing more than a sham designed to cast aspersions on CFF's reputation, harm CFF's business, and intimidate the 115 CFF funeral homes.

78. As CFF is not licensed by the Board, and as the Board has no authority over CFF, CFF has no right to a public hearing and thus has no ability to present its case to the Board, to be heard on an issue, or appeal the Boards' decision.

79. Without procedural remedy and process, CFF is deprived of its constitutional right to participate in a fair and impartial hearing, constituting a deprivation of CFF's right to due process of law as guaranteed by both the United States and Massachusetts constitutions. U.S.C.A. Const. Amend. 14; M.G.L. Const. Pt. 1, Art 10.

80. Moreover, the Board members promulgating this action are not disinterested parties, and as such the Board's conduct, to which CFF has no procedural remedy or recourse, is motivated by impermissible and improper motives, demonstrating a callous disregard for CFF's economic interests and rights, all of which constitutes an impermissible use and abuse of power.

81. The Board's action of disseminating a the Notice of Investigative conference to funeral homes in the Commonwealth that use CFF's product is and will continue to cause CFF to suffer immediate and irreparable harm by depriving CFF of its

right and ability to conduct business and compete in Massachusetts, by causing irreparable harm to CFF's state and nationwide reputation, and by placing in peril CFF's entire \$186 million dollar business.

82. The Board's conduct would also place at risk the licenses of 115 funeral homes that use CFF and would also call into question the status of over 7,000 individual pre-need trust accounts, possibly causing chaos and panic in the market place.

83. As such, this Court should enjoin the Board from taking further action in this matter until such time that the Court has the opportunity to determine and declare: (1) whether CFF is in violation of any of the Board's Regulations; and (2) whether the regulations are, as a whole, valid or whether they are beyond the scope of the Board's authority.

COUNT III
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Enjoining the Board from Barring the Use of Investment Advisors by Pre-Need Trustee Banks and from Finding that CFF is Not in Compliance with the Regulations

84. CFF repeats and realleges the allegations of paragraphs 1 through 83 as though set forth in full herein.

85. The Board's interpretation of its own Regulations to exclude the use of investment advisors by pre-need trustee banks is without regulatory support and contrary to the trustee's fiduciary obligations to its beneficiaries.

86. The Regulations are silent on the matter of investment advisors.

87. The position taken by the Board will effectively terminate CFF's ability to provides its services in Massachusetts, will jeopardize the licensure of over 115 CFF

funeral homes and will call into question the status of over 7,000 individual pre-need trusts accounts.

88. As CFF is not licensed by the Board, and as the Board has no authority over CFF, CFF has no right to challenge the Board's interpretation of its Regulations and thus has no ability to present its case to the Board, to be heard on an issue, or appeal the Board's decision.

89. Without procedural remedy and process, CFF is deprived of its constitutional right to participate in a fair and impartial hearing, constituting a deprivation of CFF's right to due process of law as guaranteed by both the United States and Massachusetts constitutions. U.S.C.A. Const. Amend. 14; M.G.L. Const. Pt. 1, Art 10.

90. As such, this court should enjoin the Board from taking further action in this matter until such time that the Court has the opportunity to determine and declare: (1) whether CFF is in violation of any of the Board's Regulations; and (2) whether the regulations prohibit pre-need investment advisors.

COUNT IV
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**Declaring the Board's Pre-Need Regulations Beyond the
Scope of the Board's Enabling Authority**

91. CFF repeats and realleges the allegations of paragraphs 1 through 90 as though set forth in full herein.

92. The section of the Regulations regulating pre-need trusts exceeds that Board's authority. The Regulation seeks to regulate trusts, banks and investment advisors, areas well beyond the Board's authority and its funeral home and embalming expertise.

93. Such entities—banks, trusts and investment advisors—are heavily regulated by both federal and state agencies.

94. As CFF is not licensed by the Board, and as the Board has no authority over CFF, CFF has no administrative right to challenge the Regulations and thus has no ability to present its case to the Board, to be heard on the issue, or appeal the Boards' decision.

95. Without procedural remedy and process, CFF is deprived of its constitutional right to participate in a fair and impartial hearing, constituting a deprivation of CFF's right to due process of law as guaranteed by both the United States and Massachusetts constitutions. U.S.C.A. Const. Amend. 14; M.G.L. Const. Pt. 1, Art 10.

96. Accordingly, this Court should enjoin the Board from enforcing its Regulations until the Court has had the opportunity to declare whether or not the Regulations concerning pre-need contracts exceed the Board's limited authority.

97. Such Regulations should be deemed null and void as beyond the limited authority and power of the Board and the Board should be enjoined from enforcing the same.

COUNT V
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**Declaring the Regulations Invalid and
Enjoining the Board from Enforcing the Same**

98. CFF repeats and realleges the allegations of paragraphs 1 through 97 as though set forth in full herein

99. The applicable language of the Regulations defining a pre-need trustee as one who has a fiduciary responsibility to the pre-need beneficiary, bears no reasonable

relationship to any permissible legislative or state objective and further bears no real and substantial relation to public health, safety, morals or some other phase of general welfare.

100. To the extent, if any, that the Regulations prohibit a trustee banks from using investment advisors, such language bears no reasonable relationship to any permissible legislative or state objective and further bears no real and substantial relation to public health, safety, morals or some other phase of general welfare.

101. Enactment and enforcement of these Regulations therefore, is a violation of CFF's constitutionally protected substantive due process and equal protection rights. U.S.C.A. Const. Amend. 14; Mass. Const. Amend. 14; M.G.L. Const. Pt. 1, Art. 1, 10.

102. Such Regulations should be deemed null and void as beyond the limited authority and power of the Board, and the Board should be enjoined from enforcing the same.

103. The Board's actions and threatened action, and its stated interpretation of its Regulations with respect to investment advisors, poses an actual, viable threat of serious harm to CFF's business and reputation as well as a threat to the 7,000 open Massachusetts pre-need trust assets currently management by CFF and a threat to the existence and reputation of each of the 115 CFF funeral homes.

104. Should CFF be effectively terminated as a pre-need funeral trust provider, CFF's national business reputation will be irreparably tarnished, which harm could not be undone or remedied by money alone.

WHEREFORE, the Plaintiff prays as follows:

1. That the Court issue an order of notice for the Defendant to appear and show cause as to why the preliminary injunction prayed for in prayer No. 2 should not issue.
2. That a preliminary injunction be entered until further order of the Court restraining and enjoining the Defendant from:
 - a. conducting its April 27, 2005 Investigative Conferences;
 - b. issuing any additional Notices of Investigative Conferences or any other communications, Notices or letters regarding the compliance status of Cooperative Funeral Fund's pre-need funeral trusts,
 - c. publishing, by oral or written communication, that Cooperative Funeral Trust's pre-need trust services are in violation of the Board's Regulations, and
 - d. proceeding against the licenses of any funeral home as a result of its use of Cooperative Funeral Trust's pre-need funeral trust services.
3. That final judgment enter in favor of Plaintiff on Counts I-IV:
 - a. permanently enjoining the Board from finding Cooperative Funeral Fund's pre-need trust services to be in violation of the Board's Regulations;
 - b. declaring that the Regulations do not prohibit use of investment advisors by pre-need trustee banks; or, in the alternative
 - c. declaring the Regulations to be invalid and unenforceable as beyond the Board's scope of authority and for lack of legitimate and rational

public purpose, and in violation of procedural and substantive due
process rights under the Massachusetts and United States constitutions.

4. And that the Court award such other and further relief as the Court seems
just.

Plaintiff
COOPERATIVE FUNERAL
FUND, INC.
By its attorneys,

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Dated: April 15, 2005

VERIFICATION

I, Mark Mannix, President of Cooperative Funeral Fund have read the foregoing Complaint and the same is true of my own knowledge except as to any matters stated therein to be on information and belief and as to those matters, I believe them to be true.

Executed at Boston, Massachusetts on this day of April, 2005.

Mark Mannix, President
Cooperative Funeral Fund