

**BEFORE THE ARKANSAS CEMETERY BOARD**

**IN THE MATTER OF:                      ORDER NO. C-07-009-08-OR02**

**ROSELAWN CEMETERY ASSOCIATION, INC.,  
d/b/a ROSELAWN CEMETERY, FORT SMITH, and**

**FOREST PARK CEMETERY ASSOCIATION, INC.,  
d/b/a FOREST PARK CEMETERY, FORT SMITH**

**ORDER**

A hearing was held before the Arkansas Cemetery Board (“Cemetery Board”) during its First Quarterly Meeting of 2008 on March 26, 2008, in Little Rock. The Cemetery Board heard evidence and considered complaints submitted against Roselawn Cemetery Association, Inc., d/b/a Roselawn Cemetery, (“Roselawn”), and Forest Park Cemetery Association, Inc., d/b/a Forest Park Cemetery, (“Forest Park”). Mr. Robert McKenzie, a complainant, appeared in person. Ms. Mary Ashworth, also a complainant, appeared audibly via telephone conference. Appearing in person on behalf of Roselawn and Forest Park were Mr. Boyd Fowler, a co-owner of the cemeteries, and Mr. Richard Quitliano, manager of the cemeteries. Upon consideration of the testimony of the witnesses, the exhibits, and all other matters presented, the Cemetery Board hereby finds and concludes:

## FINDINGS OF FACT

1. Roselawn is a perpetual care cemetery located in Fort Smith.

Roselawn is licensed with the Cemetery Board pursuant to the Cemetery Act for Perpetually Maintained Cemeteries, (“Arkansas Cemetery Act”), **Ark. Code Ann. §§ 20-17-1001 through 20-17-1029.**

2. Forest Park is a perpetual care cemetery located in Fort Smith.

Forest Park is licensed with the Cemetery Board pursuant to the Arkansas Cemetery Act, **Ark. Code Ann. §§ 20-17-1001 through 20-17-1029.**

3. The corporate entities that own Roselawn and Forest Park share the same principals and management.

4. On March 27, 2007, the Cemetery Board met and considered a complaint submitted by Robert McKenzie against Roselawn. Mr. McKenzie alleged and submitted evidence demonstrating improper care and maintenance of Roselawn. Mr. Jay Drake, an examiner with the Arkansas Securities Department, testified that he had inspected Roselawn on July 19, 2006, August 20, 2006, and February 23, 2007. Mr. Drake reported that that during his inspections at Roselawn, he had observed “a failure to remove excess dirt in a timely manner following internments, deep ruts from tire tracks, and a significant number of partially buried flat markers”. Mr. Drake further testified that he had inspected Forest Park on February 23, 2007.

Mr. Drake reported that during his inspection of Forest Park Cemetery, he had observed “a failure to remove excess dirt in a timely manner following internments, a significant number of partially buried flat markers, and numerous fallen limbs across the cemetery”. At the conclusion of the March 27, 2007, hearing, the Cemetery Board directed Arkansas Securities Department staff to perform inspections of the care and maintenance of Roselawn and Forest Park prior to the quarterly board meeting in 2007. In its order, the Cemetery Board warned that a failure to demonstrate improvement in the care and maintenance of Roselawn and Forest Park could result in the imposition of additional contributions to the permanent maintenance funds of the cemeteries, pursuant to **Ark. Code Ann. § 20-17-1006(7)**.

5. At its March 28, 2008, meeting, the Cemetery Board heard additional testimony from Mr. McKenzie. Mr. McKenzie testified and offered photographic evidence of an ongoing failure to remove excess dirt from gravesites in a timely manner following internments. Similar testimony was heard from Ms. Ashworth. Numerous other complaint letters against Roselawn and Forest Park were received by board members from citizens prior to the meeting.

6. After considering the testimony of the witnesses, the exhibits, and other evidence, the Cemetery Board found that there is an ongoing failure of Roselawn and Forest Park to timely remove excess dirt from the gravesites following internments, and that this failure is a violation of the Arkansas Cemetery Act, specifically **Ark. Code Ann. §20-17-1006(7)**.

### CONCLUSIONS OF LAW

7. The Arkansas Cemetery Act provides that the Cemetery Board may order a cemetery company to make additional contributions of not more than three thousand dollars (\$3000.00) to a cemetery's permanent maintenance fund upon a finding that the cemetery company has failed to properly care for and maintain or preserve a cemetery. **Ark. Code Ann. § 20-17-1006(7)**.

8. The Arkansas Administrative Procedure Act grants regulatory licensing agencies the discretion to impose alternative sanctions in appropriate instances. The alternative sanctions available include the imposition of conditions or restrictions upon regulated activities of the holder of a license or permit, or, the imposition of other requirements or penalties that are deemed appropriate under the circumstances of the case. The alternative sanctions imposed must achieve the agency's desired disciplinary purposes,

without impairing the public health and welfare. **Ark. Code Ann. §§ 25-15-217(b)(4) and (b)(5).**

9. Orders of the Cemetery Board are subject to review by the Circuit Court of Pulaski County, Arkansas, or by the circuit court in the county in which any part of the cemetery lies, provided that an application for review of the order is made with the appropriate court within thirty days of the date of the entry of the order. **Ark. Code Ann. § 20-17-1005(e).**

### ORDER

10. The Cemetery Board finds that an order was entered on April 12, 2007, citing Roselawn and Forest Park for their failures to properly maintain and care for the cemetery properties. More specifically, it was determined that Roselawn Cemetery and Forest Park Cemetery had failed to remove excess dirt from gravesites in a timely manner following internments. In its 2007 order, the Cemetery Board admonished Roselawn and Forest Hill that failure to demonstrate improvement in the care and maintenance of the cemeteries could result in the imposition of a requirement that additional contributions be made into the permanent maintenance funds of Roselawn and Forest Park pursuant to **Ark. Code Ann. § 20-17-1006(7).**

11. The Arkansas Cemetery Board finds that Roselawn and Forest Park have failed to demonstrate improvement in the care of maintenance of the

cemeteries since the entry of the 2007 order. The Cemetery Board finds that the evidence reflects that Roselawn and Forest Park have engaged in a continued failure to remove excess dirt from gravesites in a timely manner following interments, and that the cemeteries are therefore improperly cared for and maintained.

12. The Cemetery Board hereby orders Roselawn Cemetery Association, Inc. to make an additional contribution into the permanent maintenance fund of Roselawn in the sum of \$3000.00. Roselawn shall submit proof to the Cemetery Board that this additional contribution has been made within thirty (30) days of the date of this order. In the alternative, Roselawn may submit proof to the Cemetery Board that it has purchased the appropriate equipment needed for the removal of excess dirt from gravesites in a timely manner following interments. Should Roselawn elect to purchase equipment in lieu of making the additional contribution, proof that the equipment has been purchased must be submitted to the Cemetery Board within thirty (30) days of the date of this order.

13. The Cemetery Board hereby orders Forest Park Cemetery Association, Inc. to make an additional contribution into the permanent maintenance fund of Forest Park in the sum of \$3000.00. Forest Park shall submit proof to the Cemetery Board that the additional contribution has been made within thirty

(30) days of the date of this order. In the alternative, Forest Park may submit proof to the Cemetery Board that it has purchased the appropriate equipment needed for the removal of excess dirt from gravesites in a timely manner following internments. Should Forest Park elect to purchase the equipment in lieu of making the additional contribution, proof that the equipment has been purchased must be submitted to the Cemetery Board within thirty (30) days of the date of this order.

14. The Cemetery Board hereby authorizes its Secretary, the Arkansas Securities Commissioner, to direct Securities Department staff to conduct periodic inspections of Roselawn and Forest Park pursuant to **Ark. Code Ann. §§ 20-17-1006(1) and 20-17-1007(a)(1)(A) and (a)(1)(B)**, and **Rule 20.01, Rules of the Arkansas Cemetery Board**. The timing and frequency of these inspections shall be at the discretion of the Secretary. The Cemetery Board recommends that the Secretary and staff monitor the dates of current internments at Roselawn and Forest Park, and perform inspections following such internments to measure progress by the cemeteries in removing excess dirt from gravesites in a timely manner.

15. The Cemetery Board finds that the entry of this order is in the public interest.

Dated this 17 day of April, 2008.

  
Betty Finley, Chairperson

  
A. Heath Abshire, Secretary