

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
Service Corporation International,)	
a corporation, and)	Docket No. C-4174
)	File No. 061-0156
Alderwoods Group, Inc.,)	
a corporation)	
_____)	

**PETITION FOR APPROVAL OF PROPOSED DIVESTITURE
TO O’HAIR & RIGGS FUNERAL SERVICES, INC.**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2006), and Paragraph III.A. of the Decision and Order issued by the Commission in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to O’Hair & Riggs Funeral Services, Inc. (“ORFS”) of O’Hair & Riggs Funeral Chapel, 515 Pine St., Klamath Falls, Oregon.

The Divestiture Businesses associated with O’Hair & Riggs Funeral Chapel (as defined in the Decision and Order, and hereinafter collectively referred to as the “ORFS Divestiture Assets”) will be sold to ORFS pursuant to the Asset Sale Agreement dated June 7, 2007 (the “Sale Agreement”), by and among ORFS and Alderwoods (Oregon), Inc. (“AOI”), an affiliate that is owned 100% by SCI. The executed Sale Agreement is attached hereto as Confidential Exhibit A.

Background

On October 13, 2006, SCI and Respondent Alderwoods Group, Inc. (“Alderwoods”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Alderwoods would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On November 22, 2006, the Commission accepted the Consent Agreement for public comment, and after the close of the public comment period, the Commission gave final approval to the Consent Agreement and issued the Decision and Order. On November 28, 2006, SCI consummated its acquisition of Alderwoods. Alderwoods is now a wholly owned subsidiary of SCI.

Because the confidential version of this petition, including Confidential Exhibit A, contains confidential and competitively sensitive business information relating to the divestiture of the ORFS Divestiture Assets — the disclosure of which may prejudice the Respondents and ORFS, cause harm to the ongoing competitiveness of the ORFS Divestiture Assets, and impair the Respondents’ ability to comply with their obligations under the Consent Agreement — the Respondents have redacted such confidential information from the public version of this petition. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2006), the Respondents request that the confidential version of this petition and the information contained herein be accorded confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2006). The confidential version of this petition is also exempt from disclosure

under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

SCI desires to complete the proposed divestiture of the ORFS Divestiture Assets as soon as possible following Commission approval thereof. All pre-closing conditions other than Commission and state regulatory approval have already been satisfied, so that AOI and ORFS expect to be in position to close the divestiture within a few days of Commission approval.¹

Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, ORFS, and the Respondents, because it will allow ORFS to move forward with its business plans for the competitive operation of the ORFS Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2006), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the ORFS Divestiture Assets to ORFS pursuant to the Sale Agreement as soon as practicable after the close of the public comment period.

I. The Sale Agreement Is Final and Consistent with the Decision and Order's Terms

Paragraph III.A. of the Decision and Order requires the Respondents in each Dignity Area designated in the complaint in this matter to either terminate the Dignity Memorial Affiliate Agreement with each Dignity Affiliate in that area or divest the Alternative Divestiture

¹ Pursuant to Oregon law, prior to a change of ownership, ORFS must apply to the Oregon Mortuary and Cemetery Board (the "Board") for the issuance of a new license on forms provided by the Board that show ORFS as the new owner. ORFS expects to file the application by June 15, 2007. After processing the application and completing required background investigations, the Board will schedule a final inspection of the facilities to be acquired by an inspector. ORFS expects to have the new license and be ready to close the transaction by July 15, 2007.

Assets (as these terms are defined in the Decision and Order) to a purchaser approved by the Commission. Pursuant to this requirement, SCI has diligently sought buyers that would be acceptable to the Commission for the various Alternative Divestiture Assets through an extensive auction process that produced great interest in the properties, including but not limited to O’Hair & Riggs Funeral Chapel. On June 7, 2006, SCI entered into a Sale Agreement that requires SCI to sell the ORFS Divestiture Assets to ORFS, the highest bidder. The ORFS Divestiture Assets represent all of the Alternative Divestiture Assets in the Dignity Area in and around Klamath Falls, Oregon.

The Sale Agreement with ORFS complies with the requirements of Paragraph III of the Decision and Order. Paragraph III.A.2. allows Respondents to fulfill its obligations under the Decision and Order by divesting the ORFS Divestiture Assets, absolutely and in good faith. ORFS will acquire the ORFS Divestiture Assets pursuant to Section 1.1 of the Sale Agreement. As required under the Consent Agreement, the ORFS Divestiture Assets are presently among the assets being operated separately from SCI’s other operations under the management of Ron Collins, the independent Manager, and under the supervision of Bill Rowe, the Independent Monitor.

* * *

As demonstrated above and in the accompanying Sale Agreement, SCI has entered into an agreement relating to the divestiture of the ORFS Divestiture Assets that fully complies with the Decision and Order. Accordingly, the Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph III.A.2. of the Decision and Order.

II. The Proposed Acquirer Will Be a Strong and Effective Competitor

ORFS’s management has extensive experience in the death care industry, and ORFS has the financial wherewithal to make this acquisition. The acquisition of the ORFS

Divestiture Assets by ORFS will therefore assure that O'Hair & Riggs Funeral Chapel remains a strong and effective competitor in Klamath Falls, Oregon.

Background

Guy N. Saxton and John L. Yeatman started ORFS in May 2007 for the purpose of purchasing the assets and assuming certain liabilities of the seller. The shares of ORFS are owned equally by Mr. Saxton and Mr. Yeatman. Saxton and Yeatman and their affiliated companies jointly own and operate 16 cemeteries, four funeral homes and one crematory, with locations in Maryland, Texas, Louisiana, Illinois and California. In addition, Messrs. Saxton and Yeatman each individually own a cemetery in Pennsylvania. Together, these facilities provide services to approximately 4,800 families each year.

Guy Saxton is a 1984 graduate of Northeastern University with a bachelor's degree in Business Administration. He began work in the death care industry in 1980 when he worked as a grounds maintenance person at a cemetery. Mr. Saxton has held a variety of positions in death care facilities including: crematory operator, sales counselor, sales manager, general manager and vice-president. In 1994, Mr. Saxton acquired ownership of Northampton Memorial Shrine, Inc. (a cemetery in Easton, Pennsylvania) and has served as its President since that time. Mr. Saxton has served as a member of the Board of Directors of the Pennsylvania Cemetery and Funeral Association (the "PCFA") at various times since 1989 and is the current President of the PCFA.

A 1989 graduate of the University of Maryland with a bachelor's degree in Accounting, John Yeatman is a certified public accountant. Early in his career (1990), Mr. Yeatman was selected to manage the death care department of a local public accounting firm (McLean, Koehler, Sparks and Hammond). In addition to developing experience with the accounting and tax issues of concern to the death care industry, Mr. Yeatman was responsible for

developing the management information consulting service provided by the firm. In 1996, Mr. Yeatman started Yeatman & Associates, CPAs, PC. His firm provided accounting and business consulting services to over 150 businesses in the death care industry over the next five years. During this period, Mr. Yeatman consulted for each of five largest public death care companies at that time (SCI, Loewen Group, Stewart Enterprises, Carriage Services and Rock of Ages). Mr. Yeatman has also been a speaker at state funeral/cemetery association meetings on tax, trust and operational issues.

Saxton and Yeatman purchased their first property together in June 2001 with the acquisition of a cemetery in California from the Loewen Group (the predecessor of Alderwoods). Over the last six years, Saxton and Yeatman and their affiliated companies have continued to grow their operations through several acquisitions. These acquisitions include the purchase of two cemeteries in Maryland and one cemetery in Texas from SCI in 2003, six cemeteries in Illinois from the Alderwoods Group in 2004, one cemetery in Illinois from SCI in 2005, three cemeteries in Maryland and one cemetery, three funeral homes and a crematory in California from SCI in 2006, and a cemetery and funeral home in Louisiana from SCI in 2007. The 16 cemeteries, four funeral homes and one crematory acquired in these transactions over the last six years constitute the current joint holdings of Saxton and Yeatman and their jointly owned affiliates today.² The present acquisition is consistent with Saxton and Yeatman's focus on facilities that they believe can be operated profitably.

Saxton and Yeatman do not have any competitive assets or agreements with privately held funeral homes in the area around Klamath Falls, Oregon, with their closest facility in California. As provided in the Sale Agreement, Saxton and Yeatman are also acquiring a

² In addition, Guy Saxton individually owns Northampton Memorial Shrine, Inc., which owns a cemetery in Eaton, Pennsylvania, and John Yeatman individually owns Grandview Memorial Association, Inc., which owns a cemetery in Beaver Falls, Pennsylvania.

funeral home approximately 65 miles away in Ashland, Oregon.³ Saxton and Yeatman have other pending transactions to acquire from SCI two funeral homes, a cemetery and a crematory in Pennsylvania and a cemetery in Maryland.⁴ In addition, corporations owned by Mr. Saxton and Mr. Yeatman expect to sign an Asset Sale Agreement with SCI shortly to purchase three funeral homes in California, including two that are required to be divested under the Decision and Order.⁵

Financial Capability

Saxton and Yeatman are very experienced in obtaining funding for transactions, as evidenced by their prior acquisitions. Saxton and Yeatman will fund the purchase of the ORFS Divestiture Assets through a combination of investments by them, a mortgage on the real estate or an existing line of credit, whichever combination is most beneficial to Saxton and Yeatman at closing. Typically, 10% equity is used for these acquisitions.

Operations Experience

As noted, Guy Saxton, President of ORFS, has extensive experience in the death care industry. Mr. Saxton began his career working summers on the grounds of a local cemetery

³ The Sale Agreement provides that Litwiller-Simonsen Funeral Services, Inc. (“LSFS”), a corporation owned Saxton and Yeatman, will acquire Litwiller-Simonsen Funeral Home in Ashland, Oregon. This funeral home is not in a relevant geographic market defined in the Complaint, and thus does not require Commission approval. Saxton and Yeatman do not operate any funeral homes in the area in and around Ashland, Oregon.

⁴ Saxton and Yeatman have signed a letter of intent to purchase two funeral homes, H.P. Brandt Funeral Home, Inc., and Burton L. Hirsch Funeral Home, Inc., in Pittsburgh, Pennsylvania. In addition, companies owned by Messrs. Saxton and Yeatman have signed letters of intent for other acquisitions – the acquisition of Funeral Lawn Memorial Park and Crematory in Johnstown, Pennsylvania, by Forest Lawn Memorial Association PA, Inc., and the acquisition of Cedar Lawn Memorial Park in Hagerstown, Maryland, by Cedar Lawn Memorial Association MD, Inc. These funeral homes, cemeteries and crematory do not overlap with any of the facilities currently owned by Messrs. Saxton and Yeatman. In keeping with SCI’s general practice, these transactions will be completed on the same day that the parties sign the definitive agreements.

⁵ Specifically, three corporations owned by Saxton and Yeatman – namely, Ivers & Alcorn Merced Funeral Services, Inc., Ivers & Alcorn Atwater Funeral Services, Inc. and Mariposa Funeral Services, Inc. – expect to enter into an Asset Sale Agreement to acquire Ivers & Alcorn Funeral Home in Merced, California, Ivers & Alcorn Funeral Home in Atwater, California, and Mariposa Funeral Home in Mariposa, California. The divestiture of the two Ivers & Alcorn Funeral Homes is required under the Decision and Order, and a separate petition will be filed for the California transactions. Saxton and Yeatman do not presently own or operate a funeral home in the areas in and around Merced, Atwater and Mariposa, California.

as a teenager. After graduating from Northeastern University, Mr. Saxton purchased a cemetery in Williamsport, Pennsylvania. Mr. Saxton oversaw the day-to-day sales and operations of this cemetery until he sold the cemetery to the Loewen Group in 1997. Similarly, John Yeatman has extensive experience handling the financial aspects of death care businesses. As set forth above, Mr. Yeatman managed the death care department of an accounting firm, and later founded his own firm that provided accounting and business consulting services to 150 death care industry businesses. Mr. Yeatman has consulted on a variety of industry related issues, including compliance with state trust law statutes, installation and implementation of remote location cemetery management information systems, and development of operational policies and procedures.

Working with Mr. Yeatman, Mr. Saxton has been responsible for the acquisition of 16 cemeteries, four funeral homes and one crematory, and their transition away from ownership by public companies. This transition has included the integration of management and the oversight of the day-to-day operations. Prior to their purchase, few of the acquired facilities had been profitably managed by the prior ownership, and of the funeral homes, only one of the four were profitable. However, each of these acquired facilities has experienced improved performance under Mr. Saxton's management and all have been profitable under his leadership (while the remaining funeral home has become more profitable than under prior management). Keys to this success include developing location specific incentives to assist in motivating managers and focusing them on providing enhanced services to families, growing the business and operating within cost budgets.

In order to maintain consistent personalized service at O'Hair & Riggs Funeral Chapel, Saxton and Yeatman plan to retain the present location manager at the facility and they expect to enter into discussions with him in the near future regarding goals and incentives. In the

past, most employees at acquired locations have continued in their jobs, and Saxton and Yeatman expect this to be the case in this acquisition. In addition, Saxton and Yeatman expect to continue to implement strategies to attract families to the facility, including by marketing and improving public awareness of the facility and by providing personalized services that will yield positive recommendations from the families it serves. Saxton and Yeatman believe this will not only ensure the continued competitiveness of the divestiture facility, but it will make O’Hair & Riggs Funeral Chapel more competitive.

III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition

The proposed divestiture of the ORFS Divestiture Assets, as embodied in the Sale Agreement, will achieve the purposes of the Decision and Order. ORFS’s management has significant industry experience and a proven track record of successfully acquiring, operating and improving funeral homes. ORFS enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the ORFS Divestiture Assets, and enhance their competitiveness in the market for funeral services. Combining the ORFS Divestiture Assets with ORFS management’s experience will ensure that the objectives of the Commission’s Decision and Order will be realized.

The proposed divestiture will result in no harm to competition. There is no overlap between the operations of ORFS (or of its affiliates) and the ORFS Divestiture Assets. Consequently, the proposed divestiture does not raise any competitive issue.

In sum, the proposed divestiture will remedy any anticompetitive effects that could result from the Acquisition. The Sale Agreement will achieve the Commission’s stated purposes of ensuring the continued use of the ORFS Divestiture Assets in the same business in

which they were engaged at the time of the announcement of the proposed Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the ORFS Divestiture Assets to ORFS, as embodied in the Sale Agreement, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

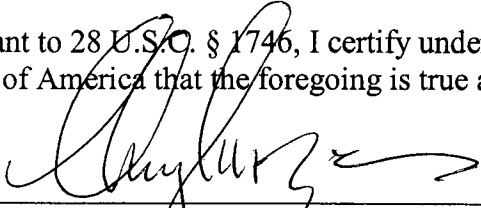


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Counsel for Respondents
Dated: June 8, 2007

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

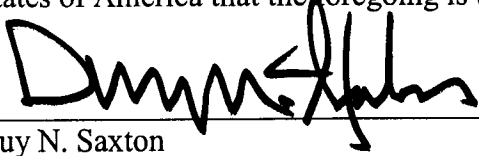
A handwritten signature in black ink, appearing to read "Chris Cruger", written over a horizontal line. The signature is stylized and includes a long horizontal stroke at the end.

Christopher H. Cruger
Vice President, Business Development
Service Corporation International

CERTIFICATION OF O'HAIR & RIGGS FUNERAL SERVICES, INC.

The facts and information related in the foregoing Petition, insofar as they pertain to O'Hair & Riggs Funeral Services, Inc., its subsidiaries and affiliates, and their respective assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Guy N. Saxton", written over a horizontal line.

Guy N. Saxton
President
O'Hair & Riggs Funeral Services, Inc.

EXHIBIT A

[REDACTED FROM THE PUBLIC RECORD VERSION]