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FEATURED

Former funeral director: Suit 'frivolous'

Katharhynn Heidelberg May 31, 2018



Sunset Mesa Funeral Directors, owned and directed by Megan Hess, as seen in February.

(Montrose Daily Press file photo)

A former Montrose funeral home owner whose business was raided by the FBI has through her attorney denied the substance of complaints brought by the family of a man whose remains she handled.

Megan Hess, who formerly operated Sunset Mesa Funeral Home and Crematory, along with Donor Services Inc., said in a May 7 filing the family of Gerald “Cactus” Hollenback failed to state a claim for which a court can grant relief and that the complaint is barred because the complainants “suffered no actual injury.”

Additionally, the damages sought by Hollenback’s widow, Shirley, and stepdaughter, Diana McBride, “are unreasonable and excessive,” Hess attorney Bryan E. Kuhn wrote in the formal response to the women’s lawsuit.

“To the extent that plaintiffs allege that defendants participated in illegal or wrongful conduct with respect to (Hollenback and McBride), those allegations are denied,” Kuhn wrote in response to each of the claims for relief.

Cactus Hollenback died in May, 2017 and was to be cremated so his ashes could be spread with those of his beloved dog. His family used Hess’ funeral home for arrangements.

In their suit, Shirley Hollenback and McBride say Cactus was taken to the mortuary clad only in pajamas, yet, after a lengthy delay, they received cremains that included the remnants of a watch, a zipper and metal rivets.

The women’s suit alleges fraud, outrageous conduct, breach of contract and violation of the Colorado Consumer Protection Act.

The Colorado Department of Regulatory Agencies cited the handling of Cactus’ cremains in its February decision to suspend Hess’ mortuary and crematory licenses. The agency also said it found another family was given cement mix, rather than ashes.

Further, the business in one instance embalmed a decedent without survivors’ permission and was not in compliance with certain record-keeping and disposition permit requirements, the state said, in announcing what it called “multiple and willful” violations of the Mortuary Science Code.

The FBI's February raid is separate from the state's action on Sunset Mesa's licenses. The FBI does not comment on ongoing investigations and has not said what brought agents to Sunset Mesa.

A January report by Reuters made allegations about Hess' other business, Donor Services Inc., which procured donated human remains for medical research.

The Hollenback family's suit cites the state's orders of licensure suspension; Hess in her reply denied the substantive allegations.

Through her attorney, she rejected plaintiffs' interpretation of DORA's suspension orders. The applicable part of the orders state the appropriate division director found "that the public health, safety, or welfare imperatively requires emergency action, and/or respondent is guilty of multiple and willful violations of the Mortuary Science Code," Kuhn wrote, placing emphasis on "and/or."

The mortuary's response contends the suit is barred by several legal doctrines, including "unjust enrichment." As well, it is at least in part barred because the damages claim is "purely speculative."

"Without conceding that plaintiffs have suffered any damages as a result of any alleged wrongdoing by defendants, plaintiffs failed to avoid or minimize their alleged damages," Kuhn wrote. Accordingly, damages should be barred or reduced, he argued.

Sunset Mesa complied with all applicable laws, acting in good faith, he added, going on to call the Hollenback and McBride claim "bad faith ... frivolous, unreasonable and without foundation."

Hess through her attorneys previously tried to have the lawsuit stayed, pending the outcome of the FBI matter. Her attorneys argued responding could interfere with her right against self-incrimination.

The motion for a stay was rejected as premature.

A scheduling conference has been set for June 25 in the case.

Hess is due in court the following day on an unrelated misdemeanor case in which she is accused of reckless driving and reckless endangerment.

Police allege Hess got into her vehicle and pursued two women who'd come to her business and pounded on the door. According to police information at the time, Hess was afraid someone was breaking in, but allegedly gave chase when they left. She allegedly bumped one of the other women with her vehicle after the two pulled over and one of them got out.

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