

A Norwalk woman is suing a funeral home for cremating her husband, who died suddenly while she was out of the country, without properly notifying her or obtaining her permission.

In the suit, Helen Hyland claims the director of Maloney Funeral Home, 55 Walnut St. in Winsted, Conn., hoodwinked her by faxing a death certificate specifying cremation, which she signed while she was trying to secure a flight home.

According to court documents, Hyland, a native of Poland, was visiting relatives there when her husband, Thomas Hyland, died of natural causes in his sleep on May 22, 2005, at the couple's Winsted home. Jerry Hamilton, president, director and sole owner of the funeral home, had the body cremated based on an order signed one day later by Hyland's mother, 85-year-old Margaret Hyland, who lived with the couple and was legally blind.

The suit, filed more than two and a half years ago on Helen Hyland's behalf by her attorney, Mark Sherman, claims negligence on the part of the funeral home for not properly consulting his client or notifying her of the cremation.

The suit claims that, when they came to the home to remove the body, Maloney Funeral Home director Jerry Hamilton and his assistant Heidi Mertz pressured the grieving, elderly mother into making a decision as to what to do with the body to avoid losing the account because the funeral home had no cold storage facility for long-term keeping.

Hyland she needed to make a decision "in a hurry." She then told the director she wanted to consult her other children, but no one from the funeral home ever attempted to contact the deceased's surviving relatives, including his siblings and his children, about the matter. No one from the funeral home called Helen Hyland in Poland to ask her what her wishes were in spite of her having left a list of phone numbers for places she would be staying in Poland on the family's refrigerator door.

Presumably, Sherman wrote, directors did not want the body to go to a competing funeral home capable of storing the body until the widow returned to Connecticut to give burial instructions.

The suit cites state statute 45a-318, which outlines a chain of custody for deceased people and specifies that only the custodian has the right to make decision as to its disposal. The statute dictates that spouses have automatic custody unless they have abandoned their marriage, in which case living children assume the legal rights followed by surviving parents.

"The funeral home tried to leap frog over the statute in order to close a quick cremation sale," Sherman said.

According to the suit, Helen Hyland is seeking in excess of \$15,000 in damages. A judge recently denied the defense's motion to dismiss the case, and it is scheduled to go to trial in early April in Stamford Superior Court.

The suit also states that Maloney Funeral Home was in violation of Connecticut's Unfair . . .

Trade Practices Act, which allows for plaintiffs to collect up to three times the amount of damages awarded by a jury that finds in their favor.

In an interview, Sherman declined to specify the amount of damages his client would probably receive if the suit were decided in her favor, saying it was for a jury to decide.

However, because he had invoked CUTPA legislation, the funeral home's "exposure," meaning the amount of money a plaintiff is likely to receive, would be "very great," he said.

Hamilton declined to comment for this story when contacted by phone Tuesday.

As a licensed funeral director, the suit claims, Hamilton should have been aware of Connecticut statutes governing the custody and disposition of remains and obligating him to contact his client.

"In total defiance of Connecticut law, the Defendant never inquired about the decedent's wishes, never sought meaningful contact with the decedent's surviving spouse ... never broached the possibility of transferring the account to a funeral home that could actually provide cold storage, and never sought guidance from the Probate Court as to which family member ought to be granted disposition rights," Sherman wrote in the suit.

The suit claims negligent infliction of emotional distress. Helen Hyland "suffered horribly" in the days after learning of her husband's cremation, Sherman wrote, and at times "she wanted to die."

For a few days upon her return, the suit states, "she was confined to her bed, never wanting to leave her husband's ashes ... As she put it, her 'soul was ill.' Helen says thinking about the way her husband was treated 'like a dog,' continues to be a daily source of pain and upset."

Over the past two years, Helen Hyland has been receiving treatment and taking Prozac for "depression" and "an adjustment disorder with depression and anxiety." Her psychotherapist testified that "90 percent" of the woman's psychological problems is a result of her husband's "wrongful cremation."

Under oath, Hamilton and Mertz claimed that "bad blood" existed between Margaret Hyland and her daughter-in-law during depositions, so the elderly woman misled them about her daughter-in-law's imminent return to Winsted.

Hamilton testified they had no choice but to cremate because the body would deteriorate “like a piece of meat sitting on a counter.” Hamilton claimed he was under the impression that Helen Hyland had “abandoned” her husband and that, therefore, the funeral home was only bound to comply with the mother’s wishes.

Helen Hyland learned of her husband’s death on May 23, 2005. She requested that the death certificate be faxed to her so that she could obtain a bereavement ticket through her travel agency because, according to Sherman, she could not afford to purchase another ticket immediately without the discount. Hamilton sent the death certificate, on which cremation had already been checked off as means of disposal, and the widow signed the form in Poland and faxed it back the same day.

“(B)ecause she was upset and had a hard time understanding what it said, she was unaware that ‘cremation’ was marked as the chosen method of disposition,” Sherman wrote. “As far as Helen knew, her husband’s body was in the funeral home, awaiting her decision about its disposition.”

Helen Hyland obtained the ticket and flew home May 25, 2005. Prior to that, she sent word to her mother-in-law that she was returning “to organize everything and to say goodbye” to her husband.

According to court documents, Hamilton testified that Margaret Hyland told him that “she did not know” if her daughter-in-law was coming back to the country.

However, in a sworn deposition, Margaret Hyland said, “At no time did I ever tell Maloney that Helen would not be returning to the United States, and that Helen was not going to be involved in the funeral process.”

Sherman wrote that the funeral home knew his client had not abandoned her husband because an employee faxed the death certificate to her in order for her to obtain an earlier return flight than the one she had originally booked.

In depositions, Hamilton at first testified that he “had no idea” what the purpose of sending the document was. Later, he contradicted himself and offered the signed certificate as proof that he had complied with the law dictating chain of custody.

Hamilton also said in a deposition that he did not know “how Probate runs” and thought cremation was the most expedient option, according to court documents.

“The mother was going for cremation. I would have gone for cremation also. I don’t understand what the purpose is of me going to the Judge of Probate, getting custody of the body, when I am going to cremate, the same as the (what the) mother is going to do,” Hamilton said in a deposition.

Sherman said that cremation is against his client's religious beliefs because she is a Roman Catholic. Also, she had planned on being buried by her husband's side and was deprived of a last opportunity to see his body, Sherman said.

"There have been many, many lawsuits in this state where people have had their loved ones buried in the wrong plot and collected hundreds of thousands of dollars," Sherman said. "This case is even worse than that because we can't get the body back. Also, they are Catholic. It flies in the face of their religious beliefs."