

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M24-0002

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL AGENCY DECISION

The record reflects that a quorum of the Board was present at the hearing and at the time the Board made this decision on August 14, 2024. Thomas Hilderbrand, President of the Board, presided at the hearing. The record reflects that Dr. Steven Lyons and Mr. Richard Hinchler elected to recuse themselves from participating in the matter, as they served on the Board's Disciplinary Committee that reviewed this matter. Mr. Michael Allen was absent from the proceeding. Catherine E. Lee, General Counsel, appeared for the Board staff. Eric A. Montgomery, Esq. appeared for Respondent Wells Family Mortuary, LLC ("Respondent Funeral Home" or "Respondent Establishment"). Charles McDarris appeared as the Administrative Law Counsel for the Board.

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: “Does any Board member other than the one previously identified have any known conflict of interest with respect to the matter coming before the Board today? If so, please identify the conflict or appearance of conflict and refrain from any undue or inappropriate participation in the particular matter involved.” No Board Members identified any conflicts of interest or appearances of a conflict of interest, other than Dr. Lyons and Mr. Hinchey.

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FINDINGS OF FACT

1. Wells Family Mortuary, LLC (“Respondent Establishment”) applied to the Board for a funeral establishment permit and a preneed establishment permit on or about January 10, 2024 (the “2024 Applications”), and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
2. Vashti Lenique Ayers-Wells (“Ms. Ayers-Wells”) is licensed by the Board as Funeral Service License No. 3563 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. Ms. Ayers-Wells is listed as the proposed licensed manager in the 2024 Applications. For all time relevant in which Respondent previously was licensed by the Board, Ms. Ayers-Wells served as the licensed manager of Respondent Establishment.

3. In the 2024 Applications, Ms. Ayers-Wells is listed as a fifty percent (50%) member and Keaton Wells (“Mr. Wells”) is listed as a fifty percent (50%) member.
4. However, according to the Limited Liability Company Annual Report filed for Respondent Establishment with the North Carolina Secretary of State on or about January 4, 2024, only Kaelie Morgan Wells and Kaloni Nicole Wells are listed as members of Respondent Funeral Home. Neither Kaelie Morgan Wells nor Kaloni Nicole Wells are licensed by the Board. Therein, Mr. Wells is listed as the Chief Executive Officer and Ms. Ayers-Wells is listed as the General Manager of Respondent Establishment.
5. Respondent Establishment previously held FE Permit 1029. On March 23, 2023, the Board issued a Final Agency Decision, in which the Board denied Respondent Establishment’s 2023 renewal application for FE Permit 1029. Respondent Establishment did not timely appeal the 2023 FAD.
6. In the 2023 FAD, Ms. Ayers-Wells’ funeral service license was placed on a one-year probation.
7. In the 2023 FAD, the Board found, among other things, that:
 - a. Respondent Establishment and Ms. Ayers-Wells violated N.C. Gen. Stat. § 90-210.25(e)(1)h. by aiding and abetting an unlicensed person to perform funeral services;
 - b. Respondent Establishment and Ms. Ayers-Wells violated N.C. Gen. Stat. § 90-210.69(c)(1), which prohibits offering to engage or engaging in preneed funeral service without having obtained a license to do so;
 - c. Respondent Establishment and Ms. Ayers-Wells violated N.C. Gen. Stat. § 90-210.69(c)(2), which prohibits aiding and abetting an unlicensed person or entity to offer to engage or engage in preneed funeral service;
 - d. Mr. Wells had held himself out as practicing funeral service or operating a funeral establishment without being licensed to do so; and
 - e. Ms. Ayers-Wells was not actively engaged in the operations of Respondent Establishment and failed to oversee the daily operations of Respondent Establishment, while serving as the licensed manager of Respondent Establishment.
8. On or about February 23, 2024, the Board staff informed Respondent Establishment that the 2024 Applications had been preliminarily denied and provided Respondent Establishment with the opportunity to appeal the decision.

9. On March 22, 2024, Respondent Establishment timely appealed the denial of the 2024 Applications.
10. A Notice of Hearing for the above-captioned case was issued to Respondents on or about March 24, 2024, and was continued at the Respondent's request to the Board's August 2024 meeting date.
11. The hearing for the above-captioned case was heard on August 14, 2024, before the Board.
12. At hearing, Inspector Brett Lisenbee testified credibly that Respondent Funeral Home's 2024 Applications to the Board were preliminarily denied, pursuant to N.C. Gen. Stat. §§ 210-25(d)(4) and 90-210.27A(e).
13. N.C. Gen. Stat. § 90-210.27A(e) provides, in pertinent part, that, if a funeral establishment "is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment."
14. At hearing, Mr. Wells provided conflicting testimony as to the current ownership interest of Respondent Funeral Home. Mr. Wells presented as an exhibit an Amended Limited Liability Company Annual Report, which did not bear a file-stamp by the North Carolina Secretary of State. Said Annual Report indicates that Kaelie Morgan Wells, Kaloni Nicole Wells, and Vashi Ayers Wells currently are members of Respondent Funeral Home. Mr. Wells further presented as an exhibit an Operating Agreement on behalf of Respondent Funeral Home, representing that both he and Ms. Vashti Ayers Wells are the sole members of Respondent Funeral Home.
15. At hearing, Inspector Lisenbee testified credibly that the North Carolina Secretary of State's website did not reflect a filing by Respondent Funeral Home of the Amended Limited Liability Company Annual Report to which Mr. Wells testified, as referenced in Paragraph 14 above. Said Annual Report presented at hearing by Mr. Wells was not signed or dated by a representative of Respondent Funeral Home, and as such appears incomplete.
16. Inspector Lisenbee testified credibly that, as of the hearing date, the North Carolina Secretary of State's website did not reflect that any licensee of the Board currently serves as a member of Respondent Funeral Home.
17. The Board does not find Mr. Wells' testimony regarding the current ownership of Respondent Funeral Home to be credible. However, the Board finds that Keaton Wells currently serves as the Chief Executive Officer of Respondent Funeral Home.
18. N.C. Gen. Stat. § 90-210.25(d)(4) provides, in pertinent part, that "[t]he Board may place on probation, refuse to issue . . . a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board"

19. At hearing, Keaton Wells testified that Respondent Funeral Home no longer offers a “Community Funeral Plan” on behalf of Respondent Funeral Home. As found by the Board in its 2023 FAD, Mr. Wells previously offered a “Community Funeral Plan” on behalf of Respondent Funeral Home, through which he previously solicited consumers to remit \$250 to Respondent Funeral Home, which he intended to place into an FDIC-insurance bank account owned by Respondent Funeral Home. In the 2023 FAD, the Board found that Mr. Wells would commingle all such deposits by consumers into the bank account or “fund,” and that payment of \$250 would entitle the consumers to certain funeral services upon their death.
20. At hearing, Keaton Wells further testified that Respondent Funeral Home has not engaged in the practice of funeral service since March 2023, at which time the denial of its 2023 renewal application was upheld by the Board. The Board does not find this testimony of Mr. Wells to be credible, in that Mr. Wells admitted on cross-examination that Respondent Funeral Home has accepted preneed funds from Donald and Shirley Camps while unlicensed to do so, including after March 2023. According to Mr. Wells, Respondent Funeral Home currently has deposited within a savings account in its name—and not in a trust account—the preneed funds paid by Donald and Shirley Camps, who are Keaton Wells’ family members.
21. N.C. Gen. Stat. § 90-210.60(8) defines “preneed funeral planning” to mean the “offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise.”
22. N.C. Gen. Stat. § 90-210.60(5) defines “preneed funeral contract” to mean:

[A]ny contract, agreement, or mutual understanding, or any series or combination of contracts, agreements, or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum.
23. N.C. Gen. Stat. § 90-210.60(7) defines “preneed funeral funds” to mean:

[A]ll payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for

a purpose or which by operation provide for the furnishing or performance of funeral or burial services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, or the providing of the proceeds of any insurance policy for such use.

24. N.C. Gen. Stat. § 90-210.25(f)(1) provides as follows:

Unlawful Practices. – The following shall constitute unlawful practices:

- (1) Any person who practices or holds himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article shall be guilty of a Class 2 misdemeanor.

25. N.C. Gen. Stat. § 90-210.70 provide as follows:

- a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be guilty of a felony. . . .
- b) Any person who willfully violates any other provision of this Article shall be guilty of a Class 1 misdemeanor. Each such violation shall constitute a separate offense and may be prosecuted individually.
- c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided.
- d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. . . .
- e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any

provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection.

26. In the 2023 FAD, the Board previously found that Keaton Wells had held himself out as practicing funeral service or operating a funeral establishment without being licensed to do so. The Board hereby further finds that, following the issuance of the 2023 FAD, Keaton Wells has continued to hold himself out as practicing funeral service (including preneed funeral service) and as operating a funeral establishment without being licensed to do so.
27. The Board finds that Respondent Funeral Home has not rehabilitated its operations following the issuance of the 2023 FAD, in that it has engaged in the unlicensed practice of funeral service by accepting preneed payments from Donald and Shirley Camps since March 2023.

CONCLUSIONS OF LAW

1. Respondent is subject to jurisdiction before the Board.
2. Respondent was properly served with process.
3. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes, to hear this matter.
4. To the extent that the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); Peters v. Pennington, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).
5. The findings of fact, conclusions of law, and final agency decision set forth in the 2023 FAD are binding on this tribunal and are incorporated by reference herein. *See Calloway v. Form Motor Co.*, 281 N.C. 496 (1972) (“The well established rule in North Carolina is that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another's errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.”); *see Gray v Orange County Health Dept.*, 119 N.C. App. 62 (1995) (holding that findings of fact are binding when a petitioner fails to timely except to such findings in a petition for judicial review under the NC APA).
6. The acts and omissions of Respondents described in Paragraphs 1-27 violate N.C. Gen. Stat. § 90-210.27A(e), which requires at least one member of a funeral home owned by a

limited liability company to be licensed by the Board as a funeral director or a funeral service licensee and actively engaged in the operation of the funeral home.

7. The acts and omissions of Respondents described in Paragraphs 1-27 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time. Specifically, the acts and omissions of Respondents described in Paragraphs 1-27 violate N.C. Gen. Stat. §§ 90-210.25(d)(1) and 90-210.69(c)(1), which prohibits offering to engage or engaging in at-need and preneed funeral service without having obtained a license to do so.
8. The Board concludes that one or more of the violations described in Paragraphs 1-27 were committed by an owner, officer, operator, manager, member, or partner of Respondent Funeral Home or by an agent or employee of Respondent Funeral Home acting with the consent of a person, firm, or corporation operating it. Pursuant to N.C. Gen. Stat. § 90-210.25(d)(4), the Board has the authority to refuse to issue a funeral establishment permit of Respondent Funeral Home.

FINAL AGENCY DECISION

The Board of Funeral Service issues the following decision:

1. The 2024 application for a funeral establishment permit and the 2024 application for a preneed funeral establishment permit, submitted to the Board by Respondent Wells Family Mortuary, LLC, are denied.
2. The Board hereby orders Board staff to refer the violations of laws regulating preneed funeral service, as identified herein, to be referred to the Mecklenburg County District Attorney for consideration of criminal prosecution.
3. The Board hereby orders Board staff to pursue injunctive relief against Keaton Wells, given the evidence of unlicensed practice introduced in the above-captioned hearing.
4. This decision shall take effect upon service of this Final Agency Decision on the Respondent.
5. Under N.C. Gen. Stat. § 150B-45(a), Respondent has thirty (30) days from the date that they receive this Final Agency Decision to file a Petition for Judicial Review. Under N.C. Gen. Stat. § 150B-45(b), the Petition for Judicial Review must be filed in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case that resulted in the final decision was filed. Since this is an administrative appeal, no additional evidence will be taken. If a Petition is filed, a Superior Court Judge will review the Final Agency Decision to determine whether there were any legal errors in the Final Agency Decision.

By order of the North Carolina Board of Funeral Service, this, the 3 day of September, 2024.

By: Thomas Hilderbrand
Thomas Hilderbrand
President and Presiding Chair