

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. C17-060, P17-042

In the matter of:

Carolina Mortuary Service & Cremation, Inc.  
and Benjamin A. Bellante

Respondents.

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**CONSENT ORDER**

THIS CAUSE, coming before the North Carolina Board of Funeral Service (hereinafter the "Board") at its offices at 1033 Wade Avenue, Suite 108, Raleigh, North Carolina 27605, with a quorum present, the Board and Respondents stipulate and agree to entry of the following Consent Order:

**FINDINGS OF FACT**

1. Carolina Mortuary Service & Cremation, Inc. ("Respondent Mortuary") is licensed as Funeral Establishment No. 468 by the Board and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
2. Benjamin A. Bellante (hereinafter "Respondent Bellante" or, collectively with Respondent Mortuary, "Respondents") is licensed as the Funeral Service Licensee No. 3091 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
3. Respondent Bellante is the licensed manager of Respondent Mortuary.

**BOARD CASE NO. C17-060**

4. On September 6, 2017, Board staff received a consumer complaint (hereinafter "Board Case No. C17-060") against Respondents from [REDACTED] (hereinafter the "Complainant").
5. Complainant's sister, [REDACTED] (hereinafter the "Decedent"), died on August 15, 2017 and Complainant was appointed as the executrix of Decedent's estate.
6. Mr. Fred E. Handsel, Jr., was the sole surviving son of the Decedent. Mr. Handsel also is a partial owner in the legal entity that owns Respondent Mortuary.
7. While Mr. Handsel held disposition rights for Decedent's remains, Complainant—as the Executrix of Decedent's estate—was responsible for paying the costs associated with Decedent's funeral expenses from the general assets of the estate.

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8. Mr. Handsel allowed the Complainant to participate in the arrangement conference for Decedent and to review the final selections made for Decedent's disposition.
9. Upon information and belief, Complainant was not provided with a copy of Respondent Mortuary's General Price List, Casket Price List, or Outer Burial Container Price List during the arrangements conference. However, Complainant did receive a Statement of Funeral Goods and Services Selected ("SFGSS"), setting forth the selections of Mr. Handsel.
10. Upon information and belief, Respondents failed to oversee the arrangement conference and allowed only Mr. Handsel, an unlicensed individual, to make funeral arrangements with the Complainant on behalf of Respondent Mortuary;
11. On October 17 and 19, 2017, Board staff Inspector Brett Lisenbee (hereinafter "Inspector Lisenbee") conducted an Establishment Inspection and an investigation of Board Case Nos. C17-060 and P17-042.
12. Inspector Lisenbee's investigation for Board Case No. C17-060 found billing discrepancies between the SFGSS given to Complainant and Respondent Mortuary's General Price List, Casket Price List, and Outer Burial Container Price List. Specifically, when compared with the relevant price lists, the following charges set forth in the SFGSS were inflated for:
  - a. The "Basic Services of Funeral Director and Staff;"
  - b. The "Special-order casket;"
  - c. The "Special-order vault;"
  - d. The "paid newspaper notice;"
  - e. The "cemetery;" and
  - f. The "marker."
13. Upon information and belief, the Estate of Decedent was overcharged for goods and services regarding Decedent's disposition that had been chosen by Mr. Handsel.

BOARD CASE NO. P17-042

14. On September 11, 2017, Board staff received a Preneed Recovery Fund Application (hereinafter "Board Case No. P17-042") for Reimbursement from [REDACTED] (hereinafter "Applicant") on behalf of [REDACTED]
15. On August 12, 2010, [REDACTED] signed an insurance funded inflation-proof preneed contract with C. David Ward of Ward Funeral Service, Inc. in Gastonia, North Carolina.
16. On December 14, 2016, the Board issued a Final Agency Decision that revoked the funeral establishment permit; revoked the preneed establishment permit and ancillary preneed sales licenses for Ward Funeral Service, Inc.; and suspended the funeral service license of Mr. Ward.

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17. Thereafter, Respondents allowed Mr. Ward to practice funeral services through Respondent Mortuary. Specifically, Respondent Mortuary allowed Mr. Ward to use their facilities and equipment, when necessary, in the practice of funeral service and paid Mr. Ward a portion of revenue that he collected on behalf of Respondent Mortuary for funeral services rendered.
18. [REDACTED] died on January 27, 2017.
19. Upon notification of [REDACTED] death, the remains of [REDACTED] remains were removed and transported to Respondent Mortuary, at Mr. Ward's direction.
20. At the time of [REDACTED] removal, Respondents did not verify Mr. Ward's licensure status with the Board.
21. Applicant was informed that her husband's remains were being held at Respondent Mortuary who, in turn, provided Applicant with Mr. Ward's cell phone number, with which she was able to contact Ward.
22. On or about January 30, 2017, upon being contacted by Applicant, Mr. Ward went to Applicant's home to make the funeral arrangements for [REDACTED]
23. At the meeting with Applicant, Mr. Ward explained to Applicant that his funeral home had closed and that he was working with Respondents to provide Applicant with the necessary services for [REDACTED]
24. At the meeting with Applicant, Mr. Ward requested additional funds of \$3,000.00 from Applicant without an explanation of the charge. Thereafter, Applicant remitted a check to Mr. Ward in the amount of \$3,000.00, made payable to Carolina Mortuary Service.
25. On or about January 31, 2017, Respondents filed for death benefits provided by [REDACTED] insurance policy with Investor's Heritage Life Insurance Company.
26. On or about February 7, 2017, Respondents received a check in the amount of \$8,425.14 from Investor's Heritage Life Insurance Company.
27. Respondents gave Mr. Ward a check for \$3,500.00, representing Mr. Ward's portion of the revenues earned by Respondents from [REDACTED] service.
28. On October 17 and 19, 2017, Board staff Inspector Brett Lisenbee (hereinafter "Inspector Lisenbee") conducted an Establishment Inspection and an investigation of Board Case Nos. C17-060 and P17-042.
29. Inspector Lisenbee also found that certified copies of the death certificate purchased through the preneed contract were not provided by Respondents to Applicant for five (5) weeks.

30. Inspector Lisenbee also obtained from Respondent Mortuary an at-need file for [REDACTED]. Contained within that file, among other things, was Respondent Mortuary's at-need Statement of Funeral Goods and Services Selected for [REDACTED] ("SFGSS"), which totaled \$10,071.00 and which was not signed by a licensee.
31. Certain charges listed on the at-need SFGSS found in [REDACTED] file varied from those listed on Respondents' General Price List, Casket Price List, and Outer Burial Container Price List. Specifically, Applicant was overcharged a total of \$461.00 for the following items:
- a. Monticello vault;
  - b. Memory folders; and
  - c. Sales tax.
32. Respondents collected a total of \$11,525.14 from Applicant for [REDACTED] services. The total amount of legitimate charges was \$9,609.01. Therefore, a refund of approximately \$1,916.13 is owed. To date, Respondents have not refunded the amount owed to [REDACTED] estate.

INVESTIGATION OF AT-NEED FILE OF [REDACTED]

33. [REDACTED] died on January 22, 2017.
34. Upon notification of [REDACTED] death, the remains of [REDACTED] were removed and transported to Respondent Mortuary, at Mr. Ward's direction.
35. At the time of [REDACTED]'s removal, Respondents did not verify Mr. Ward's licensure status with the Board.
36. Inspector Lisenbee obtained from Respondent Mortuary an at-need file for [REDACTED]. Contained within that file, among other things, was Respondent Mortuary's at-need Statement of Funeral Goods and Services Selected for [REDACTED] ("SFGSS"), which totaled \$11,000.00 and which was signed by Respondent Bellante.
37. Certain charges listed on the at-need SFGSS found in [REDACTED] file varied from those listed on Respondents' General Price List, Casket Price List, and Outer Burial Container Price List. Specifically, Applicant was overcharged a total of \$1,035.00 for the following items:
- a. Basic services of funeral director and staff;
  - b. Other preparation of [the] body;
  - c. Equipment/staff for church service;
  - d. Transfer of remains; and
  - e. Monticello vault.
38. To date, upon information and belief, Respondents have not refunded the amount owed to Ms. [REDACTED] estate.

39. Respondents gave Mr. Ward a check for \$3,500.00, representing Mr. Ward's portion of the revenues earned by Respondents from [REDACTED] service.

### CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondents described in Paragraphs 1-39 violate N.C. Gen. Stat. § 90-210.25(e)(1)b, for fraud or misrepresentation in the practice of funeral service by overbilling and/or over-collecting payment for funeral services rendered.
3. The acts and omissions of Respondents described in Paragraphs 1-39 violate N.C. Gen. Stat. § 90-210.25(e)(1)e, for employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.
4. The acts and omissions of Respondents described in Paragraphs 1-39 violate N.C. Gen. Stat. § 90-210.25(e)(1)f, for payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business.
5. The acts and omissions of Respondents described in Paragraphs 1-39 violate N.C. Gen. Stat. § 90-210.25(e)(1)h, for aiding and abetting an unlicensed person to perform services.
6. The acts and omissions of Respondents described in Paragraphs 1-39 violate 16 C.F.R. § 453.2(b)(5) and N.C. Gen. Stat. § 90-210.25(e) for failing to ensure that consumers received a Statement of Funeral Goods and Services Selected signed by a licensee.
7. The acts and omissions of Respondents described in Paragraphs 1-39 violate N.C. Gen. Stat. § 90-210.25(e)(1)(j), which prohibits violating the provisions of Articles 13A, 13D, 13E, and/or 13F of Chapter 90 of the North Carolina General Statutes, all rules and regulations of the Board, or the standards set forth in 16 C.F.R. § 453 (1984), as amended from time to time.
8. Pursuant to N.C. Gen. Stat. §§ 90-210.25(e)(1)j., the Board has the authority to suspend, revoke, or refuse to issue or renew the funeral service license of Respondent Bellante. If the Board concludes that Respondent Bellante has committed any of the aforementioned violations but remains fit to practice, pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Bellante on probation and to assess a civil penalty not to exceed \$5,000.00.
9. Pursuant to N.C. Gen. Stat. § 90-210.25(d)(4), the Board has the authority to revoke, suspend, or refuse to issue or renew the funeral establishment permit of Respondent Mortuary, to place Respondent Mortuary on probation, and to assess a civil penalty not to exceed \$5,000.00.

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BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings, Respondents wish to resolve this matter by consent and agree that Board staff and counsel may discuss this Consent Order with the Board *ex parte* whether or not the Board accepts this Consent Order as written.

Whereas Respondents acknowledge that they have read this entire document and understand it;

Whereas Respondents acknowledge that they enter into this Consent Order freely and voluntarily;

Whereas Respondents acknowledge that they have had full and adequate opportunity to confer with legal counsel in connection with this matter;

Whereas Respondents understand that this Consent Order must be presented to the Board for approval and that Respondents hereby waive any argument that any Board members considering this Consent Order are disqualified from participating in a hearing of this matter; and

Whereas the Board has determined that the public interest is served by resolving this matter as set forth below.

THEREFORE, with the consent of Respondents, it is ORDERED that:

1. The Funeral Establishment Permit of Respondent Mortuary is suspended for two (2) years, but said suspension is stayed on the following conditions:
  - a. Respondent Mortuary admits to the violations herein;
  - b. Respondent Mortuary shall be placed on probation during the period of stayed suspension;
  - c. Respondent Mortuary shall not violate any law or rule of the Board during the period of suspension;
  - d. Respondent Mortuary shall timely respond to any and all Board and/or Board staff correspondence;
  - e. Respondent Mortuary shall comply with all terms of this Consent Order;
  - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Mortuary shall remit a refund in the amount of One Thousand Nine Hundred Sixteen and 13/100 Dollars (\$1,916.13) to the [REDACTED]

- g. Within thirty (30) days from the date this Consent Order takes effect, Respondent Mortuary shall remit a refund in the amount of One Thousand Thirty-Five Dollars (\$1,035.00) to the [REDACTED] and
    - h. Respondent Mortuary shall pay a compromise penalty of Two Thousand (\$2,000.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes, which shall be payable in two equal installments to be made within thirty (30) days from the Effective Date of the Consent Order and sixty (60) days from the Effective Date of the Consent Order, respectively.
  2. The Board hereby suspends the Funeral Service license of Respondent Bellante for two (2) years, but the Board stays the suspension on the following conditions:
    - a. Respondent Bellante admits to the violations herein;
    - b. Respondent Bellante shall be placed on probation for two (2) years, beginning from the date this Consent Order takes effect;
    - c. Respondent Bellante shall not violate any law or rule of the Board during the period of probation;
    - d. Respondent Bellante shall timely respond to any and all Board and/or Board staff correspondence; and
    - e. Respondent Bellante shall comply with all terms of this Consent Order.
3. The Board shall retain jurisdiction under Article 3A, Chapter 150B for all administrative hearings held in connection with or pursuant to this Consent Order. If the Board receives evidence that Respondents, collectively or individually, have violated any term of this Consent Order or any other law or rule enforced by the Board, the Board shall schedule a show cause hearing for a determination of the violations. If the Board determines that a violation has occurred, the Board may impose such disciplinary action as it determines is appropriate and is authorized by law.
4. This Consent Order shall take effect immediately upon its execution by all parties and reflects the entire agreement between Respondents and the Board, there being no agreement of any kind, verbal or otherwise, which varies, alters, or modifies this Consent Order.
5. No modification or waiver of any provision of this Consent Order shall be effective unless it is in writing, adopted and approved by the Board, and signed by the parties affected.
6. Both the Board and Respondents participated in the drafting of this Consent Order. Any ambiguities herein shall not be construed against either party in any future civil or administrative proceeding.

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7. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
8. Upon its execution by the Board and Respondents, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof.

CONSENTED TO:

CAROLINA MORTUARY SERVICE & CREMATION, INC.

Benjamin A. Bellante Date: August 1, 2018  
Benjamin A. Bellante,  
Manager

Benjamin A. Bellante Date: August 1, 2018  
Benjamin A. Bellante

By Order of the North Carolina Board of Funeral Service, this the 15 day of August, 2018.

By:

Matt Staton  
Matt Staton  
Board President