

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. C17-084

In the matter of:

Butler Funeral Home,

Respondent.

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

In accordance with N.C. Gen. Stat. § 150B-42, the North Carolina Board of Funeral Service issues the following Findings of Fact, Conclusions of Law, and Final Agency Decision in this matter.

The record reflects that a quorum of the Board was present at the hearing and at the time the Board made this decision. The record further reflects that Board members Valdus Lockhart and Steve Herndon did not participate in the hearing or deliberations of this case since they served on the Board's Disciplinary Committee. The record further reflects that Board member Chris Watson was absent. Catherine E. Lee, General Counsel, appeared for the Board; Jeffrey P. Gray appeared as Board Counsel; Respondent appeared and was unrepresented by counsel.

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: "Does any Board member have any known conflict of interest with respect to any 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 member identified any conflict of interest or appearance of a conflict.

PROCEDURAL HISTORY OF THE CASE

The Notice of Hearing in this matter was timely issued on August 13, 2018, and was timely served on Respondents. The hearing took place as scheduled on October 10, 2018, at 3:00 p.m., at the Board's offices at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

PETITIONER'S LIST OF EXHIBITS

1. Exhibit 1 - Consumer Complaint from F. Quick
2. Exhibit 2 - Consumer Complaint Addendum from F. Quick
- 3. - Exhibit 6 - Notice of Hearing
4. Exhibit 9 - Emails re: MBA Bond

RESPONDENT'S LIST OF EXHIBITS

None.

FINDINGS OF FACT

1. Butler Funeral Home (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 75 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). At no time relevant to this proceeding did Respondent Funeral Home hold an active preneed establishment permit.
2. Prior to his death in June 2018, Douglas McLaurin was licensed as the Funeral Director No. 2835 and, therefore, was 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). Mr. McLaurin served as Respondent Funeral Home's licensed manager between approximately October 2015 and June 2018.
3. Howard Brinkley Butler, Funeral Service Licensee No. 1391, has served as the licensed manager of Butler Funeral Home since approximately July 18, 2018.
4. For all times relevant to this proceeding, Terrell McMillian was an employee or agent of Butler Funeral Home for the purpose of Butler Funeral Home providing funeral services to the public. Mr. McMillian is not, and never has been, licensed by the Board as a Funeral Service Licensee or Funeral Director.

5. On December 12, 2017, Board staff received a consumer complaint (hereinafter "Board Case No. C17-084") against Respondent from Mr. [REDACTED] (hereinafter the "Complainant").
6. In his Complaint, Mr. [REDACTED] informed the Board that, on December 6, 2016, he gave Mr. McMillian a total of Three Thousand Six Hundred Eighty-Nine and 70/100 (\$3,689.70) in cash as payment toward a preneed funeral contract.
7. In support of his Complaint, Mr. [REDACTED] provided to the Board a copy of a preneed contract that was provided to him by Mr. McMillian, dated December 7, 2016. The preneed contract indicates that it was entered into by Butler Funeral Home and Mr. [REDACTED] and that the amount paid toward the contract by Mr. [REDACTED] was Three Thousand Six Hundred Eighty-Nine and 70/100 (\$3,689.70).
8. In support of his Complaint, Mr. [REDACTED] provided to the Board an email that had been sent by Inspector Lisenbee to Mr. McMillian on an unrelated topic, but which had been altered to indicate that it related to Mr. [REDACTED]'s preneed funds.
9. Several hours after submitting his Complaint to the Board, Mr. [REDACTED] informed the Board that Respondent Funeral Home had refunded to him the preneed payment of Three Thousand Six Hundred Eighty-Nine and 70/100 (\$3,689.70).

BASED upon the findings of fact, the Board makes the following:

CONCLUSIONS OF LAW

1. Respondent Funeral Home is subject to jurisdiction before the Board.
2. Respondent Funeral Home 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. The acts and omissions of Respondent Funeral Home violate N.C. Gen. Stat. § 90-210.25(e)(1)b, by allowing a non-licensed staff member to engage in fraud or misrepresentation in the practice of funeral service.
5. The acts and omissions of Respondent Funeral Home violate N.C. Gen. Stat. § 90-210.25(e)(1)h by aiding and abetting an unlicensed person to perform funeral services.
6. The acts and omissions of Respondent Funeral Home 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.

FINAL AGENCY DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the North Carolina Board of Funeral Service hereby issues the following decision:

- I. The Establishment License of Butler Funeral Home, No. 75, is suspended for a period of one (1) year, but said suspension shall be stayed upon the following conditions:
 - a. Respondent Funeral Home shall be placed on probation for one (1) year, during which time it shall not violate any law, regulation, or rule regulated by the Board; and
 - b. On or before January 1, 2019, Respondent Funeral Home shall pay a compromise penalty of Two Hundred Fifty Dollars (\$250.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.

- II. At no point in the future shall Respondent Funeral Home employ Mr. Terrell McMillian in any capacity.

By order of the North Carolina Board of Funeral Service, this the 19th day of November, 2018.

By: Charles J. Graves
~~Matt Stator~~ CHARLES J. GRAVES
Vice - President


CERTIFICATE OF SERVICE

In accordance with North Carolina General Statute Section 150B-42(a), I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Final Agency Decision was sent by United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid, addressed to:

Howard Brinkley Butler, Manager
Butler Funeral Home
441 North Railroad Street,
St. Pauls, NC 28384

Howard Brinkley Butler, Manager
Butler Funeral Home
PO Box 855
St. Pauls, NC 28384

This, the 27 day of November, 2018.



Catherine E. Lee
General Counsel