

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. C18-0001

In the matter of:

Thos. Shepherd & Son, Inc.,
Shepherd Memorial Park, Inc.,
and Thomas R. Shepherd,

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 in Raleigh, North Carolina, with a quorum present, the Board and Respondents Thos. Shepherd & Son, Inc. and Thomas R. Shepherd (hereinafter, collectively, "Respondents Shepherd") stipulate and agree to entry of the following Consent Order.

In order to terminate further controversy and avoid additional proceedings, Respondents consent to the terms of this Consent Order as follows:

FINDINGS OF FACT

1. Respondent Thos. Shepherd & Son, Inc. (hereinafter "Respondent Establishment") is licensed by the Board as Funeral Establishment No. 546 and Pre-Need Establishment No. 108 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. Thomas R. Shepherd (hereinafter "Respondent Shepherd" or, collectively with Respondent Establishment, "Respondents") is licensed as the Funeral Director No. 2171 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 Shepherd is the licensed manager of Respondent Establishment.
4. The Board's database indicates that Respondents' Preneed Annual report for 2013 was not received until April 24, 2014; the 2014 Annual Report was not received until April 22, 2015; the 2015 Annual Report was not received until October 11, 2016; the 2016 Annual Report was not received until May 10, 2017. Respondents were assessed a late fee of \$150.00 for each of the above delinquent Annual Reports.
5. To date, Board staff has not received Respondents' 2017 Annual Report.

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6. On or about January 10, 2018, Board staff received a complaint against Respondents from Forest Lawn Funeral Home (hereinafter “Forest Lawn”)
7. In the complaint, Complainant Forest Lawn states that consumer [REDACTED] (hereinafter “Complainant [REDACTED]”) had contacted Forest Lawn to perform the arrangements for her father, [REDACTED] who died on December 6, 2017.
8. The Board’s database indicates that, on or about March 14, 1995, [REDACTED] formed a preneed contract with Respondent Establishment funded by a trust held at First Citizens Bank.
9. Forest Lawn contacted Respondents on December 14, 2017 and requested that Respondents instruct First Citizens Bank to release the funds from [REDACTED] trust to Forest Lawn.
10. Forest Lawn informed the Board staff that, as of January 8, 2018, First Citizens Bank had not received any instructions or requests from Respondents regarding the release of [REDACTED] funds.
11. On January 15, 2018, Board staff received a consumer complaint against Respondents from Complainant [REDACTED]
12. According to Complainant [REDACTED], her late father, [REDACTED] originally signed a preneed contract with Respondents in 1995. When [REDACTED] died, Respondents transported and embalmed [REDACTED]’s body, and Complainant [REDACTED] paid for those services.
13. Thereafter, Complainant [REDACTED], however, decided that she preferred to have Forest Lawn carry out the rest of the arrangements for her father.
14. Complainant [REDACTED] paid Respondents for those services already performed by them and requested that Respondents release and transfer to Forest Lawn the monies held in trust at First Citizens Bank on behalf of [REDACTED]
15. On March 16, 2017—in response to Board Complaint No. C17-012—the Board issued a Letter of Caution to Respondents reminding them that a preneed contract beneficiary has the right to transfer preneed arrangements to another preneed establishment and that the contracting preneed establishment should immediately facilitate the transfer.

CONCLUSIONS OF LAW

16. Respondents are subject to jurisdiction before the Board.
17. The acts and omissions of Respondents described in Paragraphs 1-16 violate N.C. Gen. Stat. § 90-210.63, which requires the original contracting preneed licensee to immediately pay all entrusted preneed funds to a successor funeral establishment upon direction from a consumer.
18. The acts and omissions of Respondents described in Paragraphs 1-16 violate N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0302, which requires every preneed licensee to submit a preneed annual report to the Board by March 31 of each year, setting forth information on its preneed funeral contract sales and performance of such contracts.
19. The acts and omissions of Respondents described in Paragraphs 1-16 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.
20. The acts and omissions of Respondents described in Paragraphs 1-16 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
21. 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 Establishment, to place Respondent Establishment on probation, and to assess a civil penalty not to exceed \$5,000.00.
22. Pursuant to N.C. Gen. Stat. §§ 210.25(e)(1)b. and j., and 210.69(c)(4) and (6), the Board has the authority to suspend, revoke, or refuse to issue or renew the funeral directing license of Respondent Shepherd. If the Board concludes that Respondent Shepherd 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 Shepherd on probation and to assess a civil penalty not to exceed \$5,000.00.
23. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c) and (e), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed establishment permit and all ancillary preneed sales licenses of Respondent Establishment, to place Respondent Establishment on probation, and to assess a civil penalty not to exceed \$5,000.00.

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.

1. The Funeral Establishment Permit and the Preneed Establishment Permit of Respondent Establishment are suspended for one (1) year, but said suspension is stayed on the following conditions:
 - a. Respondent Establishment admits to the violations herein;
 - b. Respondent Establishment shall be placed on probation during the period of stayed suspension;
 - c. Respondent Establishment shall submit their 2017 Preneed Annual Report within fifteen (15) days from the date that this Consent Order takes effect. Failure to timely submit Respondent Establishment's 2018 Preneed Annual Report on or before March 31, 2019 shall result in the stay of the suspension for Respondent Establishment's Preneed Permit being automatically lifted for the pendency of the suspension;
 - d. Respondent Establishment shall not violate any law or rule of the Board during the period of suspension;
 - e. Respondent Establishment shall timely respond to any and all Board and/or Board staff correspondence;
 - f. Respondent Establishment shall comply with all terms of this Consent Order; and

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.
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.

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CONSENTED TO:

Thos. Shepherd & Son, Inc.

By: Thomas R. Shepherd Date: 11-08-18
Thomas R. Shepherd
Licensed Manager

Thomas R. Shepherd Date: 11-08-18
Thomas R. Shepherd

By Order of the North Carolina Board of Funeral Service, this the 14th day of NOV, 2018.

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Consent Order was sent by email and by United States Postal Service, first-class mail, postage prepaid, addressed to:

Michelle Rippon, Esq.
Constangy, Brooks, Smith & Prophete, LLP
84 Peachtree Road, Ste 230
Asheville, NC 28803
Email: mrippon@constangy.com

Attorney for the Respondents

This the 19th day of November, 2018.



Catherine E. Lee