

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. C18-0006

In the matter of: )  
Rosadale Funeral Parlor, Inc. )  
and Brandon Frederick, )  
Respondents. )

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

In accordance with N.C. Gen. Stat. § 150B-40(d), the North Carolina Board of Funeral Service (hereinafter the “Board”) 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 held and at the time the Board made this decision on December 12, 2018. The record further reflects that Board members Valdus Lockhart and Steve Herndon did not participate in the hearing or deliberations of this case because they served on the Board’s Disciplinary Committee at the time this particular matter was reviewed. Board member Matt Staton was absent; Board member Michael Stone attend part of the hearing but did not participate in the deliberation of this Final Agency Decision. Catherine E. Lee, General Counsel, appeared for Board staff. Charles McDarris appeared as administrative law counsel for the Board. Respondent appeared and was represented by Attorney Fenton Erwin (hereinafter “Respondent’s counsel”).

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: “[d]oes any board member have any known conflict of interest with respect to this 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, other than Mr. Lockhart and Mr. Herndon, stated that they had a conflict of interest or the appearance of a conflict of interest.

#### PETITIONER'S LIST OF EXHIBITS

1. Notice of Hearing and Proofs of Service
2. Board Database Printouts
3. Consumer Complaint
4. Response to Complaint
5. Rebuttal to Complaint
6. Consent Order for Board Case Nos. V09-055, V10-051, M10-006, M11-005 (fully executed on April 20, 2011)
7. Consent Order for Board Case Nos. V12-036, C13-089, C15-014, C15-053 (fully executed on June 8, 2016)
8. Consent Judgment for Mecklenburg County Superior Court Case No. 16 CVS 13994 (entered November 22, 2016)
9. Consent Order and Judgment for Mecklenburg County Superior Court Case No. 16 CVS 13994 (entered September 5, 2018)
10. Motion in the Cause and Motion to Show Cause for Civil Contempt for Mecklenburg County Superior Court Case No. 16 CVS 13994 (filed April 25, 2018)

#### FINDINGS OF FACT

1. Respondent Rosadale Funeral Parlor, Inc. (hereinafter "Respondent Establishment") is licensed by the Board as Funeral Establishment No. 744 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. Brandon Frederick (hereinafter "Respondent Frederick" or, collectively with Respondent Establishment, "Respondents") is licensed as Funeral Service No. 3136 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 Frederick is the licensed manager of Respondent Establishment.
4. Tito Truesdale, Sr. is not licensed by the Board.
5. On February 8, 2018, Board staff received a complaint against Respondents and Mr. Truesdale from Gloria Hicks-Pauling (hereinafter "Complainant"), alleging violations of the Board's governing statutes and rules in connection with the final disposition of her husband (the "Decedent").
6. Complainant's complaint alleges that, on or about the afternoon of January 22, 2018, Respondent Establishment received the embalmed remains of the Decedent, who was being transported from Illinois to North Carolina for interment.
7. As next-of-kin for the Decedent, Complainant went to Respondent Establishment on or about January 22, 2018, to make arrangements for the Decedent's burial with Mr. Truesdale, on behalf of Respondent Establishment.
8. During the arrangements conference, Complainant was shown several caskets, and Complainant made the selections for the Decedent's funeral services.
9. Complainant gave Mr. Truesdale a suit in which to bury her husband; informed Mr. Truesdale where her husband was to be buried; gave Mr. Truesdale payment of \$2,336.00, which was made payable to Respondent Establishment; and received a receipt for that amount signed by Delrika McManus, an employee at Respondent Establishment.
10. On or about January 25, 2018, a viewing for the decedent was held. The Decedent's remains were in a casket that Complainant had not chosen and was not dressed as the Complainant had directed.
11. On or about February 12, 2018, Board staff notified Respondents that a complaint had been filed against them by Complainant and requested a response within ten (10) days.
12. On or about February 21, 2018, Board staff received Respondents' response.
13. On April 12, 2011, the Board entered into a Consent Order with Respondent Establishment as resolution in the matter of: Rosadale Funeral Parlor-W.L. Truesdale Memorial Chapel and Regional O. Pruitt, Board Case Nos. V09-055; V10-051; M10-006; M11-005.
14. The Consent Order reads in part as follows:

Except as provided by this paragraph, Truesdale shall terminate all financial, ownership, management, and employment interests with Respondent Rosadale Funeral Parlor within thirty (30) days from the effective date of this Consent

Order. Truesdale may hold preferred stock in the corporation owning Respondent Rosadale Funeral Parlor, provided, however, that any preferred stock shall not have the right to be converted into common stock, and may receive payment under any stock redemption agreement or any employment severance package with the corporation owning Respondent Rosadale Funeral Parlor and any successor in interest. Truesdale further agrees not to accept, purchase, or acquire any financial, ownership, management, and employment interests with Respondent Rosadale Funeral Parlor or any successor in interest or with any new business entity without prior approval from the Board....

15. On June 8, 2016, the Board entered into a Consent Order with Respondent Establishment as a resolution in the matter of: Rosadale Funeral Parlor, Vincent Johnson, Ezzard Charles Parker, and Stephen Holmes, Board Case Nos. V12-036, C13-089, C15-014, C15-053.

16. The Consent Order reads in part as follows:

Respondent Rosadale shall terminate all employment with Tito Truesdale within thirty (30) days from the effective date of this Consent Order. Respondent Rosadale further agrees not to offer or transfer any management, and/or employment interests with Respondent Rosadale to Tito Truesdale without prior written approval from the Board. If Respondent Rosadale fails to provide such written documentation to the satisfaction of the Board's staff within thirty (30) days from the effective date of this Consent Order, the stay of suspension of the funeral establishment permit of Respondent Rosadale shall be lifted until such time as a Show Cause Hearing can be properly noticed and held.

17. On or about November 22, 2016, the Mecklenburg County Superior Court entered a Consent Judgment (the "Consent Judgment"), whereby Mr. Truesdale was ordered to cease engaging in the practice of funeral service until such time as he were licensed to do so under the provisions of Chapter 90, Article 13A-13F of the North Carolina General Statutes or until such time, if any, that the North Carolina General Assembly may permit otherwise via statute.

18. On or about April 25, 2018, the Board filed in Mecklenburg County Superior Court against Mr. Truesdale a Motion in the Cause and Motion to Show Cause for Civil Contempt (the "Motion") to re-open Case No. 16 CVS 13994 and sought an Order to show cause why Mr. Truesdale should not be held in civil contempt of the Consent Judgment entered in November 2015.

19. In support of this Motion, the Board alleged that, according to the Complainant, Mr. Truesdale had:

- a. Received payment from her for \$2,336.00 for funeral services for the Decedent;
- b. Assisted her in picking out a casket for the Decedent;

- c. Spoken to her about her concerns about the numerous mistakes in funeral arrangements;
  - d. Published a different obituary than the one she provided to him; and
  - e. Conferred with her about the funeral service and the program for the funeral service.
20. On or about September 5, 2018, the Mecklenburg County Superior Court entered a Consent Order and Judgment against Mr. Truesdale, finding Mr. Truesdale in civil contempt of the November 22, 2016 Consent Judgment because he had continued to engage in the practice of funeral service with regard to the Decedent's funeral services.
  21. In this Consent Order and Judgment, Mr. Truesdale agreed that he had engaged in the practice of funeral service in connection with the Decedent's funeral services through Respondent Establishment.
  22. Additionally in Respondents' favor, the Board finds that Rosadale met with and provided a price list to the mother of the Decedent, Mrs. Willie Mae Pauling. The parents conveyed to Respondents that they would be paying for the remainder of the funeral and were the next-of-kin in charge of the funeral.
  23. In Exhibit 4, Respondents provided payment receipts and a signed Statement of Funeral Goods and Services form signed by Willie Mae Pauling and signed by the Respondents' representative.

#### CONCLUSIONS OF LAW

1. Respondent Establishment 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. Respondent Frederick 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. Respondents are subject to jurisdiction before the Board.
4. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes to hear this matter.
5. Regarding the Notice of Hearing, Alleged Violations paragraph numbers 38, 39, 40, and 42, the Board finds that sufficient evidence was presented to call into question the legal next-of-kin, to wit, the parents met with the Respondents, paid for the bulk of the funeral, and signed documents showing receipt of the goods and services.

6. Regarding the Notice of Hearing, Alleged Violations paragraph numbers 37, 41, and 43, the Board finds it compelling that the Board filed a Motion to Show Cause (see "Exhibit 10") on or about April 25, 2018 that included the facts of the above-captioned matter and that Tito Truesdale, Sr. admitted to and entered into a Consent Order in September 2018.
7. Specifically, Mr. Truesdale previously admitted in litigation adjudicated by Mecklenburg Superior Court that he had engaged in the practice of funeral service with regard to the Decedent's disposition. His practice of funeral service took place at Respondent Establishment and included assisting Complainant in picking out a casket and taking payment from Complainant in the amount of \$2,336.00 for the Decedent's funeral services, made payable to Respondent Establishment. Complainant thereafter received a receipt for her payment of \$2,336.00 signed by Ms. Delrika McManus, a representative of Respondent Establishment.
8. Based on Mr. Truesdale's admission that he engaged in the practice of funeral service and the nature of the funeral services he provided at Respondent Establishment's facility, the Board finds that Respondent Establishment consented to Mr. Truesdale's activities on behalf of Respondent Establishment. The Board further finds that Respondent Establishment aided and abetted an unlicensed person to perform funeral services, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)h.
9. N.C. Gen. Stat. § 90-210.25(d) provides that the licensed manager of a funeral establishment "shall be charged with overseeing the daily operation of the funeral establishment." The Board finds that Respondent Frederick failed to oversee the daily operations of Respondent Establishment, by allowing Mr. Truesdale to engage in unlicensed practice on behalf of Respondent.
10. The Board has the authority to revoke, suspend, or refuse to issue or renew the funeral establishment permit of Respondent Establishment. Alternatively, the Board has the authority to place Respondent Establishment on probation, and to assess a civil penalty not to exceed \$5,000.00.
11. Respondent Frederick remains fit to practice. As such, the Board has the authority to place Respondent Frederick on probation and to assess a civil penalty not to exceed \$5,000.00.


#### FINAL AGENCY DECISION

The Board of Funeral Service hereby issues the following decision:

1. The Funeral Service License of Brandon Frederick, No. 3136, shall be placed on probation for one (1) year, during which time he shall not violate any law, regulation, or rule regulated by the Board.

2. Within six (6) months from the date of this Order, Respondent Frederick shall pay a compromise penalty of One Thousand (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
3. The Funeral Establishment License of Rosadale Funeral Parlor, Inc., No. 744, is suspended for a period of one (1) year.
4. Respondent Rosadale shall disassociate its business from Tito Truesdale, Sr in all ways, including but not limited to any financial, operational and marketing relationship.
5. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondent has thirty (30) days from the date that they receive this Final Agency Decision to file a Petition for Judicial Review. 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 which 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.
6. This Final Agency Decision shall take effect upon service of Respondent, in a manner consistent with N.C. Gen. Stat. § 150B-42(a).

By order of the North Carolina Board of Funeral Service, this, the 9 day of  
January, 2019.

By:   
\_\_\_\_\_  
Mark Blake, Vice President  
N.C. Board of Funeral Service

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 electronic correspondence and by United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid, addressed to Respondent's counsel of record as follows:

Fenton T. Erwin, Jr., Esq.  
Erwin, Bishop, Capitano & Moss, P.A.  
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This, the 9<sup>th</sup> day of January, 2019.

  
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Catherine E. Lee  
General Counsel