

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. C19-0022

In the matter of:)
)
R.H. Greene Funeral Home and)
Nathaniel G. Yarborough,)
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 on September 9, 2020, and at the time the Board made this decision on October 15, 2020. The record further reflects that Board members Valdus Lockhart and Chris Watson 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. At the hearing, Catherine E. Lee, General Counsel, appeared for Board staff; Jeffrey P. Gray, Esq. appeared as administrative law counsel for the Board; and Darron Satterfield, Esq., appeared for Respondents.

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. Watson, stated that they had a conflict of interest or the appearance of a conflict of interest.

PETITIONER’S LIST OF EXHIBITS

1. Third Amended Notice of Hearing
2. Acceptance of Service
3. Consumer Complaint
4. Response from Respondent
5. Notice of Representation and Supplemental Response from Respondent
6. Rebuttal
7. Board Investigative Summary
8. Subpoena to Expert Witness
9. Expert Witness Report
10. Death Certificate

11. Check Issued to Complainant
12. Statutes

RESPONDENTS' LIST OF EXHIBITS

None

FINDINGS OF FACT

1. Respondent R.H. Greene Funeral Home (hereinafter "Respondent Funeral Home") is licensed by the Board as Funeral Establishment No. 206 and Preneed Funeral Establishment No. 360 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. Respondent Nathaniel G. Yarborough (hereinafter "Respondent Individual") is licensed by the Board as Funeral Service Licensee No. 2406 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. For all times relevant to this Notice of Hearing, Respondent Individual has served as the licensed manager and the owner of Respondent Funeral Home.
4. On or about May 28, 2019, Board staff received a complaint against Respondents from William Larry Powell (hereinafter "Complainant"). Board staff provided Respondents with an opportunity to respond to the Complainant's allegations, and Respondents did so on or about June 10, 2019 and on July 5, 2019. Evidence obtained in this matter tend to show the following:
 - a. On March 16, 2019, the Complainant's mother passed away in Virginia. The Complainant and his sister contracted with Respondents for the decedent's funeral services and burial in North Carolina.
 - b. As part of the services arranged, Complainant paid Respondents to transfer the decedent's remains from Virginia to North Carolina.
 - c. Respondents did not file the decedent's death certificate prior to removing the decedent's body from Virginia to North Carolina.
 - d. Pursuant to Virginia law, a funeral director must obtain an out-of-state transit permit prior to removing decedent from Virginia. Va. Code Ann. § 32.1-265. Respondents did not obtain a burial-transmit permit before removing the decedent from Virginia and before handling decedent's burial in North Carolina.

- e. As part of the services for which the parties contracted, the Complainant paid Respondents for five (5) copies of decedent's death certificates, at a cost of \$60.00.
- f. Respondents are not licensed to practice funeral service in Virginia and therefore could not file or obtain the death certificate on behalf of Complainant. Respondents did not inform Complainant of their inability to file or obtain the death certificate for the decedent. Instead, in an effort to conceal their misrepresentations to Complainant, Respondents forged Complainant's name on Box 32 of the decedent's Commonwealth of Virginia - Death Certificate, which requires the signature of a "funeral director/licensee, VSAP or next of kin."
- g. Respondents did not begin their attempts to obtain a doctor's medical certification on the death certificate until about March 25, 2020, nine (9) days following the decedent's death.
- h. Respondents did not obtain the doctor's medical certification on the death certificate until April 25, 2019.
- i. As of May 7, 2020, the decedent's death certificate still had not been filed.
- j. The Complainant ultimately filed the decedent's death certificate himself, after Respondents failed to do so.
- k. Respondents failed to fully reimburse Complainant the monies that Complainant had paid Respondents to file the decedent's death certificate on his behalf.

CONCLUSIONS OF LAW

1. The acts and omissions of Respondents described in Paragraph 4 constitute fraud or misrepresentation in the operation of a licensee's business, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)b.
2. The acts and omissions of Respondents described in Paragraph 4 constitute a failure to provide, within a reasonable time, either the goods and services contracted for, or a refund for the price of goods and services paid for but not fulfilled, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)p.
3. The acts and omissions of Respondents described in Paragraph 4 violate N.C. Gen. Stat. § 130A-113(d), which provides that "[n]o dead body . . . shall be brought into this State unless accompanied by a burial-transmit or disposal permit issued under the law of the state in which death . . . occurred."

4. The acts and omissions of Respondents described in Paragraph 4 constitute knowingly making a false statement on a death certification and violating Article 4 of Chapter 130A of the General Statutes, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)m.
5. One or more of the violations described above were committed by any officer, director, manager, partner, operator, or member of Respondent Funeral Home or by any person, employee, or agent with the consent of any person, firm, or corporation operating it. 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 permits of Respondent Funeral Home, to place Respondent Funeral Home on probation, and/or to assess a civil penalty not to exceed \$5,000.00.
6. Respondent Individual committed one or more of the violations described above. Pursuant to N.C. Gen. Stat. §§ 210.25(e)(1), the Board has the authority to suspend, revoke, or refuse to issue or renew the funeral service license of Respondent Individual. However, this Board finds that Respondent Individual remains fit to practice. Therefore, pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Individual on probation, to require satisfactory completion of remedial or education training, and to assess a civil penalty not to exceed \$5,000.00.

FINAL AGENCY DECISION

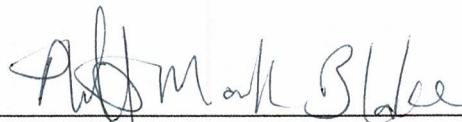
The North Carolina Board of Funeral Service hereby issues the following decision:

1. The At-Need Establishment Permit of Respondent R.H. Greene Funeral Home shall be suspended for a period of twelve (12) months, beginning on the date that this Final Agency Decision takes effect, provided that said suspension shall be stayed. However, the stay of the suspension shall be automatically lifted upon failure to fulfill the following terms and conditions
 - a. Within thirty (30) days following the effective date of this Final Agency Decision, Respondent R.H. Greene Funeral Home shall pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
 - b. Within thirty (30) days following the effective date of this Final Agency Decision, Respondent R.H. Greene Funeral Home shall provide proof to the Board that it has issued a refund of Twenty-Four Dollars (\$24.00) to William Larry Powell, representing the balance due for reimbursement of the cost paid toward the decedent's death certificates.

- c. During the period of stayed suspension as set forth above, the licensure of Respondent R.H. Greene Funeral Home shall be on probationary status and it must comply with all statutes and rules governing the practice of funeral service.
2. The Funeral Service License of Respondent Nathaniel G. Yarborough shall be suspended for a period of twelve (12) months, beginning on the date that this Final Agency Decision takes effect, provided that said suspension shall be stayed. However, the stay of the suspension shall be automatically lifted upon failure to fulfill the following terms and conditions:
 - a. Within thirty (30) days following the effective date of this Final Agency Decision, Respondent Nathaniel G. Yarborough shall pay a civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) to the Civil Penalty and Forfeiture Fund, in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes. The stay of the suspension shall be automatically lifted upon failure to timely pay the civil penalty set forth herein.
 - b. During the period of stayed suspension as set forth above, the licensure of Respondent Nathaniel G. Yarborough shall be on probationary status and he must comply with all statutes and rules governing the practice of funeral service.
3. The Board shall retain jurisdiction under Article 3A, Chapter 150B for all administrative hearings held in connection with, or pursuant to, this Final Agency Decision. If the Board receives evidence of any violations of the Board's statutes and rules identified during the period of stayed suspension, or any violation of the terms and conditions of this Final Agency Decision, 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. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondents have 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.
5. This Final Agency Decision shall take effect upon service of Respondents, in a manner consistent with N.C. Gen. Stat. § 150B-42(a).

By order of the North Carolina Board of Funeral Service, this, the 27 day of October,
2020.

By:



Phillip Mark Blake
N.C. Board of Funeral Service

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Findings of Fact, Conclusions of Law, and Final Agency Decision** was served upon the following persons by electronic email and by US Mail, First Class, postage prepaid and addressed as follows:

Daron D. Satterfield
Satterfield Law PLLC
401 Meadowlands Drive, Ste 102
Hillsborough, NC 27278

Attorney for Respondents

This, the 29 day of October, 2020.



Catherine E. Lee
General Counsel