

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. C19-0062

In the matter of:

Brunswick Funeral Service, Inc. d/b/a
Brunswick Funeral Service Memorial Gardens
(Funeral Establishment Nos. 410 and 57)
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:

1. Respondent Brunswick Funeral Service, Inc. d/b/a Brunswick Funeral Service Memorial Gardens, located in Bolivia, NC (hereinafter "Respondent FE 410") is licensed by the Board as Funeral Establishment No. 410 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 Brunswick Funeral Service, Inc. d/b/a Brunswick Funeral Service Memorial Gardens, located in Shallotte, NC (hereinafter "Respondent FE 57") is licensed by the Board as Funeral Establishment No. 57 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). Respondent FE 410 and Respondent FE 57 hereinafter are referred to collectively as "Respondents."
3. For all times relevant to this Notice of Hearing, Connie White Powell served as the licensed manager of Respondent FE 410.
4. For all times relevant to this Notice of Hearing, Larry Ray Andrews served as the licensed manager of Respondent FE 57.
5. On or about November 20, 2019, Board staff received a complaint against Respondent from Sheila P. Baker (hereinafter "Complainant").
6. In the complaint, Complainant provides that her father, Joseph Austin McAleenan passed away on September 12, 2014, and his cremated remains were interred in a green marble urn with his name imprinted in gold letters (the "Single Urn").

7. Complainant's mother, Catherine Rita McAleenan, passed away on May 17, 2016. Respondent FE 410 was contracted to remove Mr. McAleenan's cremains from the Single Urn and place the cremains of both Mr. and Mrs. McAleenan into a new double urn (the "Double Urn").
8. While making the arrangements in May 2016, Mr. Andrews told the McAleenan family that the Single Urn likely would need to be broken to remove Mr. McAleenan's cremains. Complainant paid for these services. Respondent FE 410 provided Complainant with the Double Urn that was supposed to contain the cremains of both Mr. and Mrs. McAleenan. Respondent FE 410 did not return the Single Urn to Complainant.
9. Thereafter, while attempting to have the cremains of Mr. and Mrs. McAleenan interred in a columbarium, Complainant learned that the cremains needed to be relocated from the Double Urn to a smaller urn. In February 2017, Complainant retained the services of Respondent FE 57 to do so.
10. While meeting with Mr. Andrews to purchase the smaller urn in February 2017, Complainant observed Mr. McAleenan's Single Urn in the merchandise showroom of Respondent FE 57. Upon Complainant's request, Mr. Andrews returned the Single Urn to Complainant.
11. On or about February 20, 2017, Respondent FE 57 provided Complainant with a new smaller urn that was supposed to contain the cremains of Mr. and Mrs. McAleenan. Complainant paid Respondent FE 57 for these services.
12. In April 2017, Complainant paid for the new smaller urn to be interred in a columbarium.
13. Following the interment, Complainant kept the Single Urn and the Double Urn at her home. In October 2019, Complainant discovered that the Single Urn still held all of Mr. McAleenan's cremains, along with his identifying metal tag.
14. As a result of the Respondents' acts and omissions, Mr. McAleenan's cremains had been on display in the merchandise showroom of Respondent FE 57 for an extended period of time, unbeknownst to Complainant. Moreover, because of Respondents' acts and omissions, Mr. McAleenan's cremains were not interred with the cremains of Mrs. McAleenan, as Complainant had intended.

CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.

2. The acts and omissions of Respondents described in Paragraphs 1-14 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.
3. The acts and omissions of Respondents described in Paragraphs 1-14 constitute a failure to treat a dead human body with respect at all times, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)i.
4. The acts and omissions of Respondents described in Paragraphs 1-14 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.

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 Permits No. 410 and 57 of Respondents are placed on probation for three (3) years on the following conditions:
 - a. Respondents admit to the violations herein;
 - b. Respondents shall not violate any law or rule of the Board during the period of probation;

- c. Respondents shall timely respond to any and all Board and/or Board staff correspondence;
 - d. Respondents shall comply with all terms of this Consent Order; and
 - e. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Establishment Permit No. 410 shall pay a compromise penalty of Two Thousand Five Hundred (\$2,500.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
 - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Establishment Permit No. 57 shall pay a compromise penalty of Two Thousand Five Hundred (\$2,500.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
 - g. Within thirty (30) days from the date this Consent Order takes effect, Respondents shall provide proof to the Board that they have reimbursed Complainant in the amount of Ten Thousand One Hundred Forty-Five Dollars and 91/100 (\$10,145.91) for costs and expenses incurred as a result of Respondents' acts and omissions.
 - h. On or before June 1, 2021, Larry Ray Andrews and Connie White Powell, as the licensed managers of the Respondents during all times relevant to this proceeding, shall take a Board-sponsored continuing education course on the statutes and rules governing cremations in North Carolina.
2. 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.
3. 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.

4. 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.
5. 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.
6. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
7. 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:

Brunswick Funeral Service, Inc. d/b/a
Brunswick Funeral Service Memorial Gardens, FE No. 410

By: Connie White Powell Date: 5/15/20
Connie White Powell
Licensed Manager

Brunswick Funeral Service, Inc. d/b/a
Brunswick Funeral Service Memorial Gardens, FE No. 57

By: Larry R. Andrews Date: MAY 15, 2020
Larry R. Andrews
Licensed Manager

By Order of the North Carolina Board of Funeral Service, this the 10 day of
June, 2020.

By: P. Mark Blake
P. Mark Blake
Board President