

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. C19-0073; M20-0058

In the matter of:

GRM Enterprises, Inc. d/b/a Massey Funeral
Home and George Rigsby Massey, III,
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 GRM Enterprises, Inc. d/b/a Massey Funeral Home (hereinafter “Respondent Funeral Home”) is licensed by the Board as Funeral Establishment No. 651 and Preneed Funeral Establishment No. 568 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 George Rigsby Massey, III (hereinafter “Respondent Individual”) is licensed by the Board as Funeral Service Licensee No. 1063 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 Individual holds a preneed sales license on behalf of Respondent Funeral Home.
3. For all times relevant to this Notice of Hearing, Respondent Individual has served as the licensed manager of Respondent Funeral Home.

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4. On or about November 20, 2019, Board staff received a complaint against Respondents from [REDACTED] (hereinafter “Complainant”). Board staff provided Respondents with an opportunity to respond to the Complainant’s allegations, and Respondents did so on or about March 23, 2020. Evidence obtained in this matter tend to show the following:
 - a. On or about May 10, 2018, Complainant entered into a preneed contract with Respondents, as both the purchaser and the beneficiary.

- b. Complainant paid Respondents \$500.00 in cash at the time the contract was paid. Complainant also paid Respondents \$20.00 for the preneed contract filing fee.
- c. On or about November 7, 2018, Complainant paid Respondents another \$2,000.00 in cash toward the preneed contract.
- d. Upon information and belief, Respondents deposited the money paid by Complainant toward the preneed contract into its operating account. At no point thereafter did Respondents place Complainant's preneed funds into a trust account.
- e. Respondents did not file the Complainant's preneed contract with the Board.
- f. Upon being made aware of the Complainant's complaint, Respondents paid Complainant \$2,620.00, as reimbursement for the preneed contract funds paid in 2018, plus interest.

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5. On or about March 11, 2020, a Board inspector conducted a routine preneed examination and a routine funeral establishment inspection at Respondent Funeral Home and found violations of statutes and rules governing the practice of funeral service, as follows:
 - a. Respondent failed to maintain assignment/beneficiary designation paperwork for multiple insurance-funded preneed contracts;
 - b. Respondents did not file certificates of performance for two (2) preneed contracts that had been performed by Respondents;
 - c. The embalming/preparation room of Respondent Funeral Home was unsanitary;
 - d. Two un-embalmed decedents were found in Respondent Funeral Home's preparation room who had remained unrefrigerated for more than 24 hours;
 - e. No General Price List was available for the consumer's retention;
 - f. Respondent's General Price List and Casket Price List did not comply with the FTC Rule; and
 - g. Respondent did not properly use and retain BFS Form 56D1 "Delivery of Cremated Remains from Funeral Provider."

6. Following the examination and inspection, Respondents provided evidence to the Board inspector that they obtained the missing assignment/beneficiary designation paperwork for the preneed contracts identified by the Board inspector; filed the missing certificates of performance, along with the applicable late fees; made available a General Price List for consumers' retention; and corrected the FTC Rule violations in their various price lists.

CONCLUSIONS OF LAW

1. Respondent is subject to jurisdiction before the Board.
2. 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 and 90-210.69(c)(4).
3. The acts and omissions of Respondents described in Paragraph 4 constitute violations of Article 13D of Chapter 90 of the North Carolina General Statutes, in violation of N.C. Gen. Stat. §§ 90-210.25(e)(1)j. and 90-210.69(c)(6), as follows:
 - a. Respondents did not deposit all preneed funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five (5) business days, in violation of N.C. Gen. Stat. § 90-210.61(a)(1);
 - b. Respondents deposited preneed funds into its own operating account, in violation of N.C. Gen. Stat. § 90-210.61(e);
 - c. Respondents did not remit to the Board, within ten (10) days of the sale, a copy of Complainant's preneed contract and the \$20.00 preneed contract filing fee paid by the Complainant.
4. The acts and omissions of Respondents described in Paragraphs 5-6 constitute violations of Article 13D of Chapter 90 of the North Carolina General Statutes, in violation of N.C. Gen. Stat. §§ 90-210.25(e)(1)j. and 90-210.69(c)(6), as follows:
 - d. Respondents failed to maintain instruments of assignment/beneficiary designation for multiple insurance-funded preneed contracts, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(c)(5);
 - e. Respondents failed to file certificates of performance with the Board within ten (10) days of payment, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(a) and (b);

- f. Respondents failed to keep their preparation room in a sanitary condition, in violation of N.C. Gen. Stat. § 90-210.27A(a)(6);
- g. Un-embalmed human remains kept in the custody of Respondent Funeral Home for more than 24 hours were not kept in a refrigeration unit, in violation of N.C. Gen. Stat. § 90-210.27A(l);
- h. The General Price List did not provide accurate price information, in violation of 16 C.F.R. § 453.2(a);
- i. The General Price List did not provide Respondent Funeral Home's phone number, in violation of 16 C.F.R. § 453.2(b)(4)(i)(C)(1);
- j. The General Price List did not provide a price range for immediate burial and did not provide the price of an immediate burial with a container provided by the purchaser, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(D);
- k. The Casket Price List did not provide the price of an alternative container offered for direct cremation, in violation of 16 C.F.R. § 453.2(b)(2)(i); and
- l. Respondents did not properly use and retain BFS Form 56D1, in violation of 21 N.C. Admin. Code 34C .0303(c).

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 at-need establishment permit, preneed establishment permit, and all ancillary preneed sales licenses of Respondent Funeral Home is hereby suspended for a period of at least three (3) years, except that said suspension is stayed upon the following terms and conditions:
 - a. The preneed establishment permit and ancillary preneed sales licenses of Respondent Funeral Home shall be actively suspended for a period of six (6) months beginning from the date this Consent Order takes effect or until such time as Respondent Funeral Home submits to and passes without substantial deficiency a preneed examination and audit conducted by a Board Staff Inspector, whichever occurs earlier. If the Board Staff Inspector finds evidence during said preneed examination and audit that consumer funds have been misappropriated or not properly refunded in accordance with the Board's governing statutes and rules, the stay of the suspension shall be automatically lifted until such time that a Show Cause Hearing can be held;
 - b. Following the period of active suspension, the at-need establishment permit, the preneed establishment permit and the ancillary preneed sales licenses of Respondent Funeral Home shall remain on a probationary period for at least a period of three (3) years from the date of this Consent Order, and until such time as Respondent Funeral Home submits to and passes without substantial deficiency a second preneed examination and an at-need inspection conducted by a Board Staff Inspector, which should be conducted on or before September 2023;
 - c. Respondent Funeral Home shall obtain a surety bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) and shall maintain said bond for at least five (5) years following the date this Consent Order is executed. Respondent Funeral Home shall provide proof to Board staff that it has obtained said surety bond within thirty (30) days of the date this Consent Order was executed. The surety bond obtained shall in all ways comply with 21 NCAC 34D .0203, in addition to any and all other applicable laws and rules. If Respondent Funeral Home fails to provide proof that it has obtained a surety bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) within thirty (30) days of this Consent Order taking effect, the stay of revocation on the preneed establishment permit of Respondent Funeral Home shall be immediately lifted;
 - d. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise 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;

- e. All employees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules and a Board-sponsored course on the FTC Rule on or before December 31, 2021; and
 - f. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.
2. The funeral service license of Respondent Individual is hereby suspended for a period of at least three (3) years, except that said suspension is stayed upon the following terms and conditions:
 - a. Within thirty (30) days from the date this Consent Order takes effect, Respondent Individual shall pay a compromise penalty of Five Hundred Dollars (\$500.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes;
 - b. Respondent Individual shall take a Board-sponsored course on preneed statutes and rules and a Board-sponsored course on the FTC Rule on or before December 31, 2021; and
 - c. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions 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 Consent Order. If the Board receives evidence that Respondents 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.
 4. 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.

5. 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.
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:

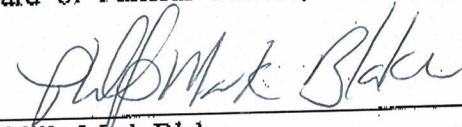
George Rigsby Massey, III

 Date: 8/1/20

GRM Enterprises, Inc. d/b/a Massey Funeral Home

By:  Date: 8/1/20
George Rigsby Massey, III
Manager

By Order of the North Carolina Board of Funeral Service, this the 12 day of
August, 2020.

By: 
Phillip Mark Blake
Board President