

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. C20-0021, M20-0057

In the matter of:

Beach Rivers Funeral Home, LLC and
Edward Kirk Rivers,
Respondents.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL AGENCY DECISION
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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 9, 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. Catherine E. Lee, General Counsel, appeared for Board staff. Charles McDarris appeared as administrative law counsel for the Board. Respondents appeared at the hearing and were not represented by 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. Watson, stated that they had a conflict of interest or the appearance of a conflict of interest.

Prior to the start of the hearing in this matter, the Board and Respondent Beach Rivers Funeral Home, LLC entered into a Consent Order to resolve this pending disciplinary matter against Respondent Beach Rivers Funeral Home, LLC only.

PETITIONER'S LIST OF EXHIBITS

1. iGov profile for Beach Rivers Funeral Home, LLC
2. iGov profile for Edward Kirk Rivers
3. Amended Notice of Hearing
4. Consumer Complaint for Case No. C20-0021
5. Return of Service for C20-0021 Consumer Complaint
6. Preneed Recovery Fund Application for Reimbursement for P20-0002
7. Board Investigative Report for C20-0021

8. Obituary for Mr. [REDACTED]
9. Email Exchange between Inspector Stoessner and [REDACTED]
10. Copy of Check from Beach Rivers Funeral Home, LLC to [REDACTED]
11. Subpoena to [REDACTED]
12. Funeral Inspection Report
13. Preneed Examination Report

RESPONDENT EDWARD KIRK RIVERS' LIST OF EXHIBITS

1. None

FINDINGS OF FACT

1. Beach Rivers Funeral Home, LLC (hereinafter "Respondent Funeral Home") is licensed by the Board as Funeral Establishment No. 0168 and Preneed Establishment No. 0903 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 Edward Kirk Rivers (hereinafter "Respondent Individual") is licensed by the Board as Funeral Director No. 3676 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 an ancillary preneed sales license on behalf of Respondent Funeral Home.
3. Prior to January 2018, Respondent Individual was the owner and manager of Rivers Community Funeral Home, which previously held Funeral Establishment Permit No. 0742 and Preneed Establishment No. 0925 before it closed.
4. In February 2018, the preneed contracts previously housed at Rivers Community Funeral Home were administratively transferred to Respondent Funeral Home. On or about February 4, 2019, Respondent Individual became the licensed manager of Respondent Funeral Home.
5. On or about February 27, 2020, 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, but Respondents did not do so. A Board inspector, Mr. Christopher Stoessner, investigated the matter.
6. At hearing, Inspector Stoessner presented evidence to show the following:

- a. On or about April 30, 2008, the Complainant's father, [REDACTED] purchased a trust-funded preneed contract from Respondent Individual at Rivers Community Funeral Home in the amount of \$4,812.00.
 - b. Respondent Individual did not place the preneed funds paid by [REDACTED] into a trust account.
 - c. Respondent Individual did not complete the preneed contract in writing on a form prescribed by the Board.
 - d. Respondent Individual did not make an entry of [REDACTED] payment on a separate cash journal or separate cash receipt book designed for preneed.
 - e. Respondent Individual did not file [REDACTED] preneed contract with the Board.
 - f. Respondent Individual did not retain a copy of the preneed contract file for Mr. [REDACTED]
 - g. On or about August 7, 2020, [REDACTED] died. The family of [REDACTED] chose to make funeral service arrangements for [REDACTED] with [REDACTED] instead of the Respondents.
 - h. On or about August 13, 2020, Respondents transmitted a check in the amount of \$4,970.00 to [REDACTED] as payment for the funeral expenses of Mr. [REDACTED]
7. Inspector Stoessner conducted an investigation into the allegations set forth in the Complainant's complaint and performed both a funeral establishment inspection and preneed examination of Respondent Funeral Home.
 8. At hearing, Inspector Stoessner presented evidence to show:
 - a. Respondents failed to maintain a General Price List with accurate price information;
 - b. Respondent failed to include the price of each casket offered for sale that does not require special ordering on its Casket Price List;
 - c. Respondent did not include the price of an alternative container offered for sale on its Casket Price List;
 - d. Respondent failed to retain and make available a copy of its previous preneed annual report;

- e. Respondents did not use or maintain a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
- f. Respondents failed to complete and/or retain a certificate of performance for the preneed contract of [REDACTED] which had been performed;
- g. Respondents failed to file with the Board a certificate of performance for the preneed contract of [REDACTED] which had been performed; and
- h. Respondents failed to maintain assignment or beneficiary designation documentation for the following insurance-funded preneed contracts:
 - i. [REDACTED] and
 - ii. [REDACTED]

CONCLUSIONS OF LAW

1. Respondent Individual 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 Individual is subject to jurisdiction before the Board.
3. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes to hear this matter.
4. The acts and omissions of Respondent Individual described in Paragraphs 1-8 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.
5. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to deposit preneed funeral funds into a trust account within five (5) business days from the date of receipt, in violation of N.C. Gen. Stat. § 90-210.61(a)(1).
6. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to timely file a preneed contract with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d), and 21 NCAC 34D .0105.
7. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to retain the physical files for a preneed contract sold, in violation of N.C. Gen. Stat. § 90-210.68(a), and, 21 NCAC 34D .0301(b), (c)(4).

8. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to complete a preneed contract in writing on a form prescribed by the Board, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(a), (b), (c)(4), and (c)(5).
9. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to maintain a General Price List with accurate price information, in violation of 16 C.F.R. § 453.2(a).
10. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to include the price of each casket offered for sale that does not require special ordering on its Casket Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i).
11. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to include the price of an alternative container offered for sale on its Casket Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i).
12. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to maintain a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D. 0301(c)(2).
13. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to retain and make available the Respondents' past preneed annual report, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(3).
14. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to properly maintain accurate and complete preneed records and forms, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(a), (b), (c)(4), and (c)(5).
15. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to either execute or retain multiple beneficiary designation documents or instruments of assignment for insurance funded preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(5).
16. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to timely complete and/or file with the Board a certificate of performance for a performed preneed contract, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(b).
17. The acts and omissions of Respondent Individual described in Paragraphs 1-8 constitute a failure to retain a completed certificate of performance for a matured or cancelled preneed

contract files, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (e).

18. The acts and omissions of Respondent Individual described in Paragraphs 1-8 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.
19. The acts and omissions of Respondent Individual described in Paragraphs 1-8 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.
20. 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 director 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

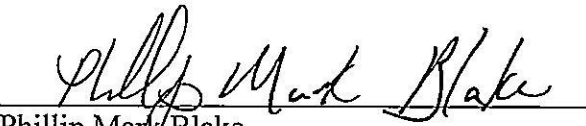
The North Carolina Board of Funeral Service hereby issues the following decision:

1. The Funeral Director License of Respondent Edward Kirk Rivers shall be on probation for a period of three years, beginning on the date that this Final Agency Decision takes effect, on the following terms and conditions:
 - a. During the period of probation set forth above, Respondent Edward Kirk must comply with all statutes and rules governing the practice of funeral service; and
 - b. Within ninety (90) days from the date this Consent Order takes effect, Respondent Edward Kirk Rivers 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.
2. 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 probation, 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.

3. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondent has thirty (30) days from the date that he receives 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.
4. 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 11 day of December, 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 Respondent by US Mail, First Class, Postage Prepaid, and addressed to:

Edward Kirk Rivers
101 Fairlead Drive
Elizabeth City, NC 27909

This, the 14 day of December, 2020.



Catherine E. Lee
General Counsel