

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. C20-0021, M20-0057

In the matter of:

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

)  
) **CONSENT ORDER**  
) **BETWEEN BEACH**  
) **RIVERS FUNERAL,**  
) **LLC AND THE BOARD**  
)

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 Respondent Funeral Home stipulate and agree to entry of the following Consent Order:

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 investigated the matter and found evidence tending 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, Mr. [REDACTED] died. The family of Mr. [REDACTED] chose to make funeral service arrangements for Mr. [REDACTED] with [REDACTED] Funeral Home instead of the Respondents.
  - h. On or about August 13, 2020, Respondents transmitted a check in the amount of \$4,970.00 to [REDACTED] Funeral Home as payment for the funeral expenses of Mr. [REDACTED]
6. A Board inspector 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. During the course of the investigation, the Board inspector obtained evidence that tends to show the following:
- 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. Respondent did not use or maintain a separate cash journal or separate cash receipt book designated for preneed, showing all preneed payments collected;
- f. Respondent failed to complete and/or retain a certificate of performance for the preneed contract of [REDACTED] which had been performed;
- g. Respondent failed to file with the Board a certificate of performance for the preneed contract of [REDACTED] which had been performed; and
- h. Respondent failed to maintain assignment or beneficiary designation documentation for the following insurance-funded preneed contracts:
  - i. [REDACTED] and
  - ii. [REDACTED]

#### **CONCLUSIONS OF LAW**

1. The acts and omissions of Respondents described in Paragraphs 1-6 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 Paragraphs 1-6 constitute a failure to maintain a General Price List with accurate price information, in violation of 16 C.F.R. § 453.2(a).
3. The acts and omissions of Respondents described in Paragraphs 1-6 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).
4. The acts and omissions of Respondents described in Paragraphs 1-6 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).
5. The acts and omissions of Respondents described in Paragraphs 1-6 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).
6. The acts and omissions of Respondents described in Paragraphs 1-6 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).
7. The acts and omissions of Respondents described in Paragraphs 1-6 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).

8. The acts and omissions of Respondents described in Paragraphs 1-6 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).
9. The acts and omissions of Respondents described in Paragraphs 1-6 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).
10. The acts and omissions of Respondents described in Paragraphs 1-6 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).
11. The acts and omissions of Respondents described in Paragraphs 1-6 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.
12. The acts and omissions of Respondents described in Paragraphs 1-6 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.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings, Respondent Funeral Home wishes 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. The disciplinary matter with regard to Respondent Individual is not resolved by this Consent Order and remains pending before the Board.

Whereas Respondent Funeral Home acknowledges that it has read this entire document and understands it;

Whereas Respondent Funeral Home acknowledges that it enters into this Consent Order freely and voluntarily;

Whereas Respondent Funeral Home acknowledges that it has had full and adequate opportunity to confer with legal counsel in connection with this matter;

Whereas Respondent Funeral Home understands that this Consent Order must be presented to the Board for approval and that Respondent Funeral Home hereby waives 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 Respondent Funeral Home, 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. Respondent Funeral Home shall surrender the ancillary preneed sales license of Respondent Individual and shall not apply for an ancillary preneed sales license on behalf of Respondent Individual in the future;
  - b. Respondent Funeral Home shall not allow Respondent Individual to serve as its licensed manager and shall inform the Board of its new licensed manager within thirty (30) days of this Consent Order;
  - c. 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;
  - d. 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 October 2023;

- e. 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;
  - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand Dollars (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes. If Respondent Funeral Home fails to pay said compromise penalty 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;
  - g. Within thirty (30) days from the date that this Consent Order takes effect, Respondent Funeral Home shall send correspondence to all consumers for whom it serves as trustee for existing preneed contracts, encouraging said consumers to confirm that all preneed funds have been properly credited toward their preneed contracts. In the event that it is discovered in the future that preneed funds paid to Respondent Individual on behalf of Respondent Funeral Home were not properly credited toward a consumer's preneed contract, Respondent Funeral Home shall immediately inform the Board; shall immediately reimburse the consumer for any financial loss; and shall provide proof of said reimbursement to the Board. Failure to comply with this Paragraph 1(g) shall result in the immediate suspension of Respondent Funeral Home's permits, until such time that a Show Cause Hearing shall be adjudicated; and
  - h. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.
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 Respondent Funeral Home has 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 the Board and Respondent Funeral Home and reflects the entire agreement between Respondent Funeral Home 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 Respondent Funeral Home 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. Respondent Funeral Home 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 Respondent Funeral Home, 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:

Beach Rivers Funeral Home, LLC

By: Edward Kirk Rivers Date: 11-16-2020  
Edward Kirk Rivers  
Co-Owner and Manager

By: Kevin Sanderlin Date: Nov 16, 2020  
Kevin Sanderlin  
Co-Owner

By Order of the North Carolina Board of Funeral Service, this the 24<sup>th</sup> day of  
November, 2020.

By: Phillip Mark Blake  
Phillip Mark Blake  
Board President