

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M15-043, M20-0025

In the matter of:

Blackwell Funeral Home, Inc.,
Faiger M. Blackwell, Sr. and Faiger
Megrea Blackwell, II.
Respondents

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

FINDINGS OF FACT

1. Respondent Blackwell Funeral Home, Inc. (hereinafter "Respondent Funeral Home") is a North Carolina corporation located in Burlington, North Carolina.
2. Respondent Funeral Home is licensed as Funeral Establishment No. 691 and Preneed Establishment No. 784 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
3. Respondent Faiger M. Blackwell, Sr. (hereinafter "Respondent Blackwell, Sr.") is licensed by the Board as Funeral Director No. 3723 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 Blackwell, Sr. never has held a preneed sales license issued by the Board.
4. Respondent Faiger Megrea Blackwell, II (hereinafter "Respondent Blackwell, II") is licensed by the Board as Funeral Director License No. 4119 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 Blackwell, II has held a preneed sales license on behalf of Respondent Funeral Home since on or about January 27, 2016.
5. Since May 16, 2019, Respondent Blackwell, Sr. has served as the licensed manager for Respondent Funeral Home.
6. Between June 18, 2018 and April 18, 2019, Respondent Blackwell, II served as the licensed manager for Respondent Funeral Home.
7. On February 8, 2017, the Board entered into a Consent Order with Respondent Funeral Home to partially resolve Board Case No. M15-043 (hereinafter the "2017 Consent Order").

8. The 2017 Consent Order ordered, in part, that:

1. The preneed establishment permit of Respondent Funeral Home is hereby revoked, except that said revocation is stayed upon the following terms and conditions:

1.b. Respondent Funeral Home shall be placed on a probationary period for at least a period of one (1) year from the date of this Consent Order, and 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 which examination should be conducted during 2017.

9. Pursuant to N.C. Gen. Stat. § 90-210.68(a) and the terms of the 2017 Consent Order, on October 3, 2017, Board Inspector Darrell Cagle (hereinafter “Inspector Cagle”) conducted a Funeral Establishment Inspection and a Preneed Examination (hereinafter “2017 Examination”) of Respondent Funeral Home.

10. During the 2017 Examination, Inspector Cagle noted violations of the Board’s statutes and rules, as follows:

- a. The most recent bank statements of funding financial institution were not available for review;
- b. Respondent’s records showed evidence of comingling entrusted preneed funds and operating funds;
- c. The preneed contract files of [REDACTED] contained no beneficiary designation documents and instruments of assignment;
- d. A trust-funded preneed contract for [REDACTED] had not been filed with the Board;
- e. An insurance-funded preneed contract for [REDACTED] was grossly overfunded by approximately \$100,000.00;
- f. No attempt had been made to contact [REDACTED] for the execution of a new contract that had been transferred to Respondent Establishment over a year prior to the 2017 Inspection;
- g. A certificate of performance was not filed with the Board for [REDACTED];
- h. Calculations for cash advance and sales tax were not performed correctly for the following:
 - i. [REDACTED]

- ii.
- iii.
- iv.

- i. Because of the failure to properly calculate the cash advance and sales tax correctly for the preneed contract of [REDACTED] a refund of \$56.30 was due to the family of [REDACTED] and had not been paid.

11. On February 22, 2018, the Board issued a Notice of Hearing to Show Cause (the "Notice"), which provided that the Funeral Home had failed to comply with the 2017 Consent Order, as set forth in the 2017 Examination. Thereafter, Respondent Funeral Home provided evidence that it had taken corrective action to address some of the deficiencies in the 2017 examination and the parties entered into a Consent Order to resolve the show cause hearing (the "2018 Consent Order").

12. The 2018 Consent Order ordered, in part, that:

1. The preneed establishment permit of Respondent Funeral Home remains revoked, except that said revocation is stayed upon the following terms and conditions in addition to the terms and conditions of the 2017 Consent Order:

1.a. The preneed establishment permit and all ancillary preneed sales licenses of Respondent Funeral Home shall be actively suspended for a period of three (3) 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 revocation shall be automatically listed until such time that a Show Cause Hearing can be held;

1.b. Following the period of active suspension Respondent Funeral Home shall remain in a probationary period for at least a period of three (3) year from the date of this Consent Order, and 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 which examination should be conducted on or before May 2021. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.

13. Pursuant to N.C. Gen. Stat. § 90-210.68(a) and the terms of the 2018 Consent Order, on October 17, 2018, Board Inspector Darrell Cagle (hereinafter "Inspector Cagle") conducted a Funeral Establishment Inspection and a Preneed Examination (hereinafter "2018 Examination") of Respondent Funeral Home.

14. During the 2018 Examination, Inspector Cagle noted violations of the Board's statutes and rules, as follows:

- a. Respondents failed to retain and make available financial statements for all insurance policies that were not sold by the licensee for policies funding insurance preneed contracts, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(c)(5).
- b. Inspector Cagle reviewed a preneed file for [REDACTED] dated 2014, and found therein assignment documents and confirmation from an insurance company that Respondent Funeral Home is the assignee of a policy for [REDACTED]. However, no preneed contract or Statement of Funeral Goods and Service Selected ("SFGSS") was in [REDACTED]'s file. At the time of the 2018 Examination, no preneed contract had been filed with the Board on behalf of [REDACTED].
- c. Inspector Cagle reviewed a preneed file for [REDACTED] dated 2013, and found therein assignment documents and confirmation from an insurance company that Respondent Funeral Home is the assignee of a policy for [REDACTED]. However, no preneed contract or SFGSS was in [REDACTED]'s file. At the time of the 2018 Examination, no preneed contract had been filed with the Board on behalf of Mr. [REDACTED].
- d. Inspector Cagle reviewed a preneed file for [REDACTED], dated 2014, and found therein an insurance policy with an assignment to Respondent Funeral Home. However, no preneed contract or SFGSS was in [REDACTED]'s file. At the time of the 2018 Examination, no preneed contract had been filed with the Board on behalf of [REDACTED]. Respondent Blackwell II sold the policy to [REDACTED] on or about December 23, 2014 and the policy application listed Respondent Funeral Home as the beneficiary.
- e. During Inspector Cagle's verification of status reports, he identified an insurance policy for [REDACTED] listed as active on the Atlantic Coast Life report, for which Respondent Funeral Home is the beneficiary. At the time of the 2018 Examination, no preneed contract had been filed with the Board on behalf of Ms. [REDACTED]. Respondent Blackwell, Sr. sold the policy to Ms. [REDACTED] on or about November 3, 2014 and the policy application listed Respondent Funeral Home as the beneficiary.

15. Following the 2018 Examination, Respondents took steps to rectify the violations, including the filing of contracts for [REDACTED].

BASED upon the foregoing, the Board makes the following:

CONCLUSIONS OF LAW

1. The acts and omissions of Respondents described in Paragraphs 1-15 violate the terms of the 2017 and 2018 Consent Orders.
2. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to timely file multiple preneed contracts with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d), and 21 NCAC 34D .0105.
3. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to retain the complete physical files for multiple preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a), and, 21 NCAC 34D .0301(b), (c)(4).
4. The acts and omissions of Respondents described in Paragraphs 1-15 constitute a failure to complete a preneed contract in writing on a form prescribed by the Board, in violation of N.C. Gen. Stat. § 90-210.62(b) and 21 NCAC 34D .0101.
5. The acts and omissions of Respondents described in Paragraphs 1-15 violate N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(c)(5), which requires Respondents to retain and make available financial statements for all insurance policies that were not sold by the licensee for policies funding insurance preneed contracts.
6. The acts and omissions of Respondents described in Paragraphs 1-15 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating any provision of Articles 13A, 13D, 13E, and/or 13F of Chapter 90 of the North Carolina General Statutes, all rules and regulations of the Board, and the standards set forth in 16 C.F.R. § 453 (1984), as amended from time to time.
7. The acts and omissions of Respondents described in Paragraphs 1-15 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.
8. 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 permit of Respondent Funeral Home; or to place Respondent Funeral Home on probation, and to assess a civil penalty not to exceed \$5,000.00.
9. Respondent Blackwell, Sr. committed one or more of the aforementioned violations but remains fit to practice. Therefore, pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Blackwell, Sr. on probation and to assess a civil penalty not to exceed \$5,000.00.

10. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed establishment permit and all ancillary preneed sales licenses of Respondent Funeral Home; or to place Respondent Funeral Home on probation, and to assess a civil penalty not to exceed \$5,000.00.
11. Pursuant to N.C. Gen. Stat. § 90-210.69(c), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed sales license of Respondent Blackwell, II or to place Respondent Blackwell, II on probation, and to assess a civil penalty not to exceed \$5,000.00.
12. Pursuant to N.C. Gen. Stat. § 90-210.23(d1), the Board may assess against Respondents costs, excluding attorneys' fees, not to exceed \$2,500.00, associated with the prosecution of this hearing to show cause.
13. The Board concludes that the responses and corrective actions taken and proposed by Respondents indicate that Respondents are making efforts to correct deficiencies and to comply with the statutes and laws governed by the Board; however, the Board believes that the extent and nature of the deficiencies warrant further disciplinary action.

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 Respondent, it is ORDERED that:

1. The preneed establishment permit of Respondent Funeral Home remains revoked, except that said revocation is stayed upon the following terms and conditions in addition to the terms and conditions in the 2017 and 2018 Consent Order:
 - a. Respondent Funeral Home shall remain in 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 preneed examination and audit conducted by a Board Staff Inspector, which

examination should be conducted on or before October 2023. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service. 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 revocation shall be automatically lifted until such time that a Show Cause Hearing can be held;

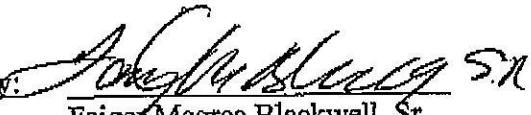
- b. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand Five Hundred (\$1,500.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
 - c. All employees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2021.
 - d. On or before March 31, 2021, Respondent Funeral Home shall retain the services of a consultant to provide training on proper completion of its annual preneed report, pursuant to N.C. Gen. Stat. § 90-210.68(a1). Respondent Funeral Home shall provide the Board with evidence that it has completed the requisite training within thirty (30) days following the training.
2. The terms of the Consent Order between Respondent Blackwell Sr. and the Board, dated April 11, 2018, shall remain in effect. Following the expiration of said Consent Order, the Funeral Director License of Respondent Blackwell Sr shall be placed on probation until September 9, 2023, during which time he shall comply with all statutes and rules governing the practice of funeral service. A letter of caution shall be issued to Respondent Blackwell II, advising him of his obligation to comply with all statutes and rules governing the practice of funeral service going forward.
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 Respondent has violated any term of this Consent Order, 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 Respondent 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 counsel for Respondent 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. Respondent hereby waives any requirement under any law or rule that this Consent Order be served upon them.
8. Upon its execution by the Board and Respondent, 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.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

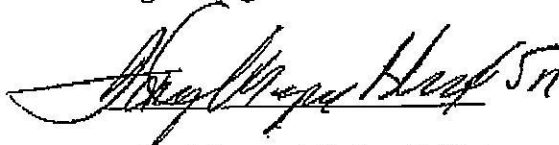
NC Board of Funeral Service: In the Matter of Blackwell Funeral Home, Inc. et al.
Case Nos. M15-0043; M20-0025
Page | 9

CONSENTED TO:


By: 
Faiger Meagrea Blackwell, Sr.
Manager, Blackwell Funeral Home, Inc.

Date: 9/9/2020

Faiger Meagrea Blackwell, Sr.



Faiger Meagrea Blackwell, II

Date: 9/9/2020



Date: 9/9/2020

By Order of the North Carolina Board of Funeral Service, this the 9th day of September, 2020.

By: 
Phillip Mark Blake
Board President