

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. M15-027

In the matter of: )  
 )  
Lewis-Bowen Funeral Home and )  
Jeffery W. Lewis, )  
 )  
Respondents. )

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL AGENCY DECISION**

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In accordance with 26 N.C. Admin. Code 3.0126 and N.C. Gen. Stat. § 150B-40(d), the North Carolina Board of Funeral Service 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 and at the time the Board made this decision. The record further reflects that Board member Matt P. Staton served as presiding officer at the hearing. The record also indicates that Valdus T. Lockhart did not participate in the hearing or deliberations of this case since he served on the Board's Disciplinary Committee. Catherine E. Lee, General Counsel, appeared as the prosecuting attorney for the Board; Jeffrey S. Gray appeared as administrative counsel for the Board. Neither Lewis-Bowen Funeral Home ("Respondent Funeral Home") nor Jeffery W. Lewis ("Respondent Lewis") (collectively "Respondents") appeared at the hearing, nor did an attorney appear on their behalf.

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: "Does any Board member have any known conflict of interest with respect to any 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 member identified a conflict of interest or the appearance of a conflict.

### **PROCEDURAL HISTORY OF THE CASE**

On November 16, 2016, the Board entered into a Consent Order with Respondents to resolve Board Case No. M15-027 (hereinafter the "Consent Order"). The Notice of Hearing to Show Cause was issued on November 30, 2017, and set the hearing date for February 15, 2018. The Notice of Hearing to Show Cause was served upon Respondents on December 18, 2017 by Board Inspector Terri R. McLean (hereinafter "Inspector McLean"). The hearing took place as scheduled on February 14, 2018, at the Board's offices at 1033 Wade Avenue Suite 108, Raleigh, North Carolina 27605.

### **PETITIONER'S LIST OF EXHIBITS**

1. Board Database Printouts
2. Notice of Hearing to Show Cause
3. Affidavit of Terri R. McLean
4. Preneed Examination Reports
5. Board Staff Correspondence with Respondents
6. Email from Inspector McLean to Respondents re: Preneed Detailed Report
7. Memorandum of Costs of Hearing to Show Cause

### **RESPONDENT'S LIST OF EXHIBITS**

None.

### **FINDINGS OF FACT**

1. Lewis-Bowen Funeral Home (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 329 and Preneed Funeral Establishment No. 541 by the Board.
2. Jeffrey W. Lewis (hereinafter "Respondent Lewis" or, collectively with Respondent Funeral Home, "Respondents") is licensed as the Funeral Director No. 3060 by the Board and holds an ancillary preneed sales license on behalf of Preneed Funeral Establishment No. 541.
3. Respondent Lewis is the licensed manager and owner of Respondent Funeral Home.

2016 CONSENT ORDER

4. On November 16, 2016, the Board entered into a Consent Order with Respondents to resolve Board Case No. M15-027 (hereinafter the "Consent Order").
5. The Consent Order ordered, in part, that:
  1. The Board hereby suspends the preneed establishment permit and any and all ancillary preneed sales licenses of Respondent Funeral Home for one (1) year, but the Board stays the suspension on the following conditions:
    - 1.a. Respondents admit to the violations;
    - 1.b. The Preneed establishment permit of Respondent Funeral Home shall be actively suspended for a period of one (1) month beginning from the date this Consent Order takes effect;
    - 1.c. Respondent Funeral Home shall be placed on probation from the remainder of said suspension period and until such time as all preneed recordkeeping, files, and accounts are brought into full compliance with the Board's laws and rules to the satisfaction of Board staff;
    - 1.d. Respondent Funeral Home must submit to and pass an inspection and audit conducted by a Board staff inspector before any probation period shall be lifted;
    - 1.e. Respondent Funeral Home shall not violate any law or rule of the Board during the period of probation;
    - 1.f. Respondent Funeral Home shall timely respond to any and all Board and/or Board staff correspondence;
    - 1.g. Respondent Funeral Home shall comply with all terms of this Consent Order.
6. The Consent Order also ordered, in part, that:
  2. The Board hereby suspends the Funeral Director license of Respondent Lewis for one (1) year, but the Board stays the suspension on the following conditions:
    - 2.a. Respondent Lewis admits to the violations;
    - 2.b. Respondent Lewis shall be placed on probation for one (1) year, beginning from the date this Consent Order takes effect;

- 2.c. Respondent Lewis shall not violate any law or rule of the Board during the period of probation;
  - 2.d. Respondent Lewis shall timely respond to any and all Board and/or Board staff correspondence;
  - 2.e. Respondent Lewis shall comply with all terms of this Consent Order.
7. As of the date of the Notice of Hearing to Show Cause, Respondents have failed to comply with the terms of the Consent Order.
8. Pursuant to N.C. Gen. Stat. § 90-210.68(a) and the terms of the Consent Order, on October 24 and 25, 2017, Board Inspector McLean conducted a Funeral Establishment Inspection and a Preneed Examination (hereinafter “2017 Inspection”) of Respondent Funeral Home.
9. During the 2017 Inspection, Inspector McLean noted violations of the Board’s statutes and rules, as follows:
- a. Respondent Funeral Home’s 2017 Renewal Application was not available for inspection;
  - b. The most recent bank statements of funding financial institution were not available for review;
  - c. Omissions in Respondent Funeral Home’s 2014 and 2015 Annual Reports had not been remedied, as directed in the Consent Order;
  - d. Respondents’ records showed evidence of comingling entrusted preneed funds and operating funds;
  - e. Respondents’ 2016 Annual Report has not been filed with Board staff;
  - f. Although the receipt for [REDACTED]’s preneed contract had been properly recorded in Respondent’s preneed cash receipts book, it had been posted twice;
  - g. The preneed contract file of [REDACTED] contained no beneficiary designation documents and instruments of assignment;
  - h. No preneed contract file was available for [REDACTED];
  - i. Board Form 56-D, “Delivery of Cremated Remains,” was missing from the closed preneed contract files of [REDACTED], [REDACTED], and [REDACTED];

- j. No documentation was available to determine the final disposition of preneed contract funds for the closed preneed contract files of [REDACTED], [REDACTED], and [REDACTED];
- k. In the closed file of [REDACTED], no preneed contract or at-need statement of funeral goods and services was found;
- l. Certificates of performance were not filed with the Board nor retained in the individual files of the following:
  - i. [REDACTED]
  - ii. [REDACTED]
  - iii. [REDACTED]
  - iv. [REDACTED]
  - v. [REDACTED]
  - vi. [REDACTED]

10. Board Preneed Program Assistant Lyn Cochrane made five attempts to contact Respondents by telephone and by U.S. Mail sent to Respondent Funeral Home's address of record regarding the 2016 Annual Report, which was due on March 31, 2017. To each of the five attempts made between May and September 2017, Ms. Cochrane received no response.

#### CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. Respondents were properly served with process.
3. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes to hear this matter.
4. Respondent Funeral Home 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).
5. Respondent Lewis 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).
6. The acts and omissions of Respondents, described in Paragraphs 1-10, violate the terms of the Consent Order.
7. The acts and omissions of Respondents, described in Paragraphs 1-10, 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.

8. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.23(d) by failing to furnish all information required by the Board reasonably relevant to the practice of the profession or business for which the person is a licensee.
9. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.61(e) for commingling funds.
10. The acts and omissions of Respondents described in Paragraphs 1-10 under Findings of Fact violate N.C. Gen. Stat. § 90-210.64(a) and N.C. Gen. Stat. § 90-210.64(e) by failing to timely file certificates of performance.
11. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
12. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(1) for failure to properly maintain files containing copies of license applications and renewals.
13. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(3) and 34D .0302 for failure to properly maintain files containing copies of annual reports and for failing to file annual reports.
14. The acts and omissions of Respondents described in Paragraphs 1-10 violate 21 NCAC 34D .0301(c)(4) and (c)(5) for failure to properly maintain files copies of records from financial institutions in which trust funds are deposited and copies of applications for insurance, insurance policies, beneficiary designations documents, and instruments of assignment.
15. The acts and omissions of Respondents described in Paragraphs 1-10 violate 21 NCAC 34D .0301(b) and .0303(b) for failure to properly maintain files containing all preneed funeral contracts purchased and failure to timely complete and file with the Board certificates of performance.
16. Pursuant to N.C. Gen. Stat. §§ 90-210.25(e)(1)j., the Board has the authority to suspend, revoke, or refuse to issue or renew the funeral directing license of Respondent Lewis. If the Board concludes that Respondent Lewis committed any of the aforementioned violations, but remains fit to practice, pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Lewis on probation and to assess a civil penalty not to exceed \$5,000.00.
17. 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.

18. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c), (f)(4) and (5), 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.
19. 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.

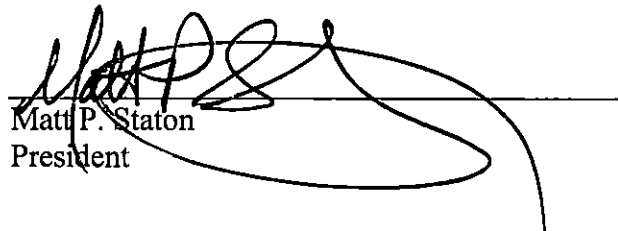
### FINAL AGENCY DECISION

The Board of Funeral Service hereby finds by a preponderance of the evidence each of the acts and omissions of Respondents described in the Findings of Fact above and that Respondents have violated the Consent Order dated November 16, 2016. Therefore, it is ORDERED that:

1. The preneed establishment permit of Respondent Lewis-Bowen Funeral Home, Permit No. 541, and all ancillary preneed sales licenses of Respondent Lewis-Bowen Funeral Home are hereby revoked.
2. The establishment permit of Respondent Lewis-Bowen Funeral Home, Permit No. 329, is hereby actively suspended for five (5) years; provided, however, that the period of active suspension shall be reduced to three (3) years upon Respondent Lewis-Bowen's successful completion of the following conditions:
  - a. Respondent Lewis-Bowen remits payment of Five Thousand Dollars (\$5,000.00) to the NC Civil Penalty and Forfeiture Fund, in accordance with Article 31C of Chapter 115C of the North Carolina General Statutes; and
  - b. Respondent Lewis-Bowen shall be on probation and shall not violate any law or rule of the Board during the period of suspension.
3. The funeral directing license of Respondent Lewis, FD No. 3060, is hereby actively suspended for five (5) years; provided, however, that the period of active suspension shall be reduced to three (3) years upon Respondent Lewis' successful completion of the following conditions:
  - a. Within thirty (30) days from the date that this Order is signed, Respondent Lewis remits payment of Five Thousand Dollars (\$5,000.00) to the NC Civil Penalty and Forfeiture Fund, in accordance with Article 31C of Chapter 115C of the North Carolina General Statutes; and

- b. Respondent Lewis shall be on probation and shall not violate any law or rule of the Board during the period of suspension.
4. Within thirty (30) days, Respondents shall remit costs in the amount of One Thousand Eighty-Seven and 40/100 Dollars (\$1,087.40) to the Board for its prosecution of the show cause hearing, and the amount of One Hundred Fifty Dollars (\$150.00) for the non-payment of late fees for the 2016 Preneed Annual Report filing.
5. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondents have thirty (30) days from the date that they receive 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.
6. This order shall take effect upon service of Respondents.

By order of the North Carolina Board of Funeral Service, this, the 14 day of March, 2018.

By:   
Matt P. Staton  
President




CERTIFICATE OF SERVICE

In accordance with North Carolina General Statute Section 150B-42(a), I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Final Agency Decision was sent by United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid, addressed to:

Lewis Bowen Funeral Home  
Jeffrey W. Lewis, Manager  
800 North Main Street  
Bladenboro, North Carolina 28320

Jeffrey W. Lewis  
Lewis Bowen Funeral Home  
800 North Main Street  
Bladenboro, North Carolina 28320

This the 15 day of March, 2018.

  
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Catherine E. Lee