

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. M15-043

In the matter of:

Blackwell Funeral Home, Inc.

Respondent.

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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 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. 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"). A copy of said Consent Order is incorporated by reference herein and is attached hereto as Exhibit A.
4. The 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.
5. Pursuant to N.C. Gen. Stat. § 90-210.68(a) and the terms of the Consent Order, on October 3, 2017, Board Inspector Darrell Cagle (hereinafter "Inspector Cagle") conducted a Funeral Establishment Inspection and a Preneed Examination (hereinafter "2017 Inspection") of Respondent Funeral Home.

6. During the 2017 Inspection, 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 limited 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 timely filed with the Board, prior to its revocation by the consumer;
  - e. The file for [REDACTED] suggested that there was a preneed insurance contract which might be overfunded by approximately \$100,000.00 and the file did not contain beneficiary designation documents or instruments of assignment;
  - 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. [REDACTED]
    - iii. [REDACTED]
    - iv. [REDACTED]
  - 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.
7. On February 22, 2018, the Board issued a Notice of Hearing to Show Cause (the “Notice”), which provided that Respondent Funeral Home has failed to comply with the terms of the Consent Order. In the Notice, the Board noted that Respondent Funeral Home submitted to the 2017 Inspection, in which the above-referenced deficiencies in Respondent’s preneed record keeping and procedures were identified.
8. Respondent Funeral Home has provided the Board with additional information with regard to the deficiencies described in the Notice and has taken corrective action to address the deficiencies identified in the 2017 Inspection including, but not limited to, correction of procedures to prevent any comingling of funds and providing the Board with evidence that the [REDACTED] preneed contract and funds were transferred to another funeral home at the family’s request and to their satisfaction in 2011 at the time of Ms. [REDACTED] death.

### CONCLUSIONS OF LAW

1. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate the terms of the Consent Order.
2. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, 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.
3. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate N.C. Gen. Stat. § 90-210.61(e) for commingling funds.
4. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate N.C. Gen. Stat. § 90-210.64(a) and (e) and 21 NCAC 34D .0303(b) by failing to timely file certificates of performance.
5. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
6. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate N.C. Gen. Stat. § 90-210.64(d), which directs the manner in which a preneed fund balances must be distributed following the performance of a preneed contract.
7. The acts and omissions of Respondent Funeral Home, described in Paragraphs 1-8, violate 21 NCAC 34D .0301(b), 21 NCAC 34D .0301(c)(4) and (c)(5) for failure to properly maintain files containing copies of all preneed funeral contracts purchased, certificates of performance, 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.
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. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c)(6), (f), 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.

10. Pursuant to N.C. Gen. Stat. § 90-210.23(dl), the Board may assess against Respondent costs, excluding attorneys' fees, not to exceed \$2,500.00, associated with the prosecution of this hearing to show cause.
11. The Board concludes that the responses and corrective actions taken and proposed by Respondent Funeral Home indicate that Respondent Funeral Home is 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.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings, Respondent wishes to resolve this matter by consent and agrees 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 Respondent acknowledges that it has read this entire document and understands it;

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

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

Whereas Respondent and the Board agree this Consent Order and the Findings of Fact and Conclusions of Law set forth herein are for the purposes of this Consent Order only and shall not be construed as an admission of liability or guilt on the part of Respondent in any other action or proceeding;

Whereas Respondent understands that this Consent Order must be presented to the Board for approval and that Respondent 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, 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 Consent Order:

- 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 lifted until such time that a Show Cause Hearing can be held;
  - b. Following the period of active suspension 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 May 2021. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.
  - c. 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.
  - d. Prior to the lifting of the probationary period, Respondent Funeral Home shall provide a balance sheet prepared by a Certified Public Accountant no less than 90 days prior to submission to the Board that shows solvency of Respondent Funeral Home.
  - e. All employees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2018.
  - f. To the extent applicable, Respondent Funeral Home is responsible for ensuring that it complies with any limitations that may be placed on the licensure of Faiger Megrea Blackwell, Sr. now or at any time in the future.
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 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.

3. 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.
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 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.
6. Respondent hereby waives any requirement under any law or rule that this Consent Order be served upon them.
7. 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.

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CONSENTED TO:


By:   
Faiger Megrea Blackwell, II  
Manager, Blackwell Funeral Home, Inc.

Date: 4/25/2018

By: \_\_\_\_\_  
Carl L. Blackwell, Jr.  
President, Blackwell Funeral Home, Inc.

Date: \_\_\_\_\_

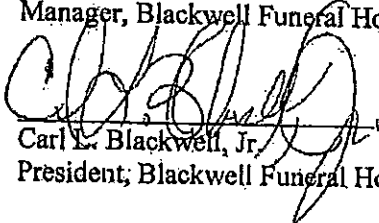
By Order of the North Carolina Board of Funeral Service, this the 9 day of  
May, 2018.

By:   
Matt R. Staton  
Board President

CONSENTED TO:

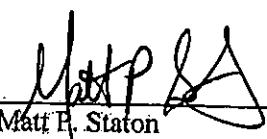
By: \_\_\_\_\_  
Faiger Megrea Blackwell, II  
Manager, Blackwell Funeral Home, Inc.

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Carl L. Blackwell, Jr.  
President, Blackwell Funeral Home, Inc.

Date: 4/24/18

By Order of the North Carolina Board of Funeral Service, this the 8 day of May, 2018.

By:  \_\_\_\_\_  
Matt R. Staton  
Board President




**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Consent Order** was served via email and first-class US Mail postage prepaid on Respondent's counsel as follows:

Robert O. Crawford  
Crawford and Crawford, PLLC  
4242 Six Forks Rd, Suite 1550  
Raleigh, NC 27609  
[bcrawford@crawfordlaw.biz](mailto:bcrawford@crawfordlaw.biz)

This the   a   day of May, 2018.

  
Catherine E. Lee