

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M17-025

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

In accordance with N.C. Gen. Stat. § 150B-42, 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 members Valduis Lockhart and Steve Herndon did not participate in the hearing or deliberations of this case since they served on the Board's Disciplinary Committee. The record further reflects that Board members Mike Stone and Chris Watson were absent. Catherine E. Lee, General Counsel, appeared for the Board; Jeffrey P. Gray appeared as Board Counsel; Respondents Cremation Society of Charlotte, Inc., Boston's Mortuary, Clarence J. Boston and Donnica A. Boston appeared and were unrepresented by counsel.

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 any conflict of interest or appearance of a conflict.

PROCEDURAL HISTORY OF THE CASE

The Notice of Hearing in this matter was timely issued on June 20, 2018, and was properly served on Respondents. On October 13, 2018, the Board adopted a Consent Order to which Respondent Shelesceyah C. McConnell agreed to resolve the proceeding against Respondent Shelesceyah C. McConnell only. The hearing took place as scheduled on October 14, 2018, at the Board's offices at 1033 Wade Avenue, Suite 108, Raleigh, NC 27605.

PETITIONER'S LIST OF EXHIBITS

1. Notice of Hearing and Proofs of Service
2. Board Database Printout
3. Funeral Establishment Inspection Report
4. Funeral Establishment Inspection Report Addendum
5. Board Staff Opinion Regarding Aiding and Abetting
6. Cremation documents re: Bare
7. Cremation Documents re: Beckham
8. NCBFS v. Crown Memorial, 00 CVS 7316, Order and Judgment
9. NCBFS v. Crown Memorial, 00 CVS 7316, Order of Civil Contempt

RESPONDENT'S LIST OF EXHIBITS

1. Cremation documents re: Bare
2. Cremation Documents re: Beckham

FINDINGS OF FACT

1. Cremation Society of Charlotte, Inc., (hereinafter "Respondent Crematory") is a corporation registered in North Carolina and licensed by the Board as Crematory No. 96 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. Clarence Boston (“Respondent C. Boston”) is licensed by the Board as Funeral Service No. 2964 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).
3. Respondent C. Boston is the owner of Respondent Crematory.
4. Donnica A. Boston (hereinafter “Respondent D. Boston”) is the manager of Respondent Crematory; is licensed as Funeral Director No. 4185; 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).
5. Boston’s Mortuary (hereinafter “Respondent Mortuary”) is licensed by the Board as Funeral Establishment No. 816 and Preneed Funeral Establishment No. 272; 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).
6. Since approximately November 23, 2017, Respondent C. Boston has served as the manager of Respondent Mortuary.
7. On September 14, 2017, pursuant to N.C. Gen. Stat. § 90-210.68(a), Board Inspectors Brett Lisenbee (hereinafter “Inspector Lisenbee”) and Karen Davis (hereinafter “Inspector Davis”) conducted a Funeral Establishment Inspection (hereinafter “2017 Inspection”) of Respondent Mortuary.
8. During the 2017 Inspection, Respondent D. Boston informed Inspector Licensee that Respondent Crematory had performed multiple cremations following contact with Crown Memorial Park (“Crown”), which is not licensed to provide funeral services in North Carolina.
9. In 2002, Mecklenburg County Superior Court ordered Crown, its employees, and agents enjoined from selling, offering to sell, arranging for, and offering to arrange for cremation services. The Court further ordered that Crown may refer members of the public to a licensed funeral establishment of such services, provided that the person is permitted to deal directly with the funeral establishment in making cremation arrangements and to make payment directly to the funeral establishment (the “2002 Order”).
10. On April 10, 2018, the Mecklenburg County Superior Court found Crown to be in civil contempt of the 2002 Court Order and ordered that Crown cease and desist from all activities described in the 2002 Court Order.

11. The Board previously had warned Respondent Crematory against performing cremations on behalf of entities not licensed to practice funeral service in North Carolina. Specifically, on June 15, 2016, Board staff sent a Letter of Caution to all crematories in North Carolina—including one addressed to Respondent D. Boston as manager of Respondent Crematory—putting them “on notice that aiding or abetting a person who is not licensed by this Board to perform funeral services in North Carolina is grounds under which the Board may take disciplinary action against a licensee.”
12. During the 2017 Inspection, Respondent D. Boston told Inspector Lisenbee that she had received, on behalf of Respondent Crematory, the June 15, 2016, letter warning against the aiding and abetting of unlicensed practice.
13. During the 2017 Inspection, Respondent D. Boston also indicated to Inspector Lisenbee that Respondent Crematory’s affiliate, Respondent Mortuary, had handled two cremations following contact with Crown in 2015 and 2016.
14. On September 14, 2017, Inspector Lisenbee reviewed files located at Respondent Crematory containing records of funeral services provided for Wanda Iona Bare in 2015 and Pearlie K. Beckham in 2016.
15. In his review of the file for Ms. Bare, Inspector Lisenbee determined that:
 - a. Ms. Wanda Iona Bare died in hospice care on August 19, 2015.
 - b. The Bare Statement of Funeral Goods and Services Selected shows a balance due of \$450.00 to be paid by Crown Memorial Park.
 - c. On August 24, 2015, Crown wrote a check to Respondent Mortuary for Four Hundred Fifty Dollars (\$450.00) with a memo line indicating “Bare.”
16. In his review of the file for Ms. Beckham, Inspector Lisenbee determined that:
 - a. On August 25, 2016, Pearlie K. Beckham died at Novant Health Medical Center.
 - b. The Beckham Statement of Funeral Goods and Services Selected shows a balance due of \$450.00 to be paid by Crown Memorial Park.
 - c. On August 30, 2016, Crown Memorial Park wrote a check to Respondent Mortuary for Four Hundred Fifty Dollars (\$450.00), with a memo line indicating “Beckman” [sic].
17. At hearing, the Respondents provided evidence that they had not held themselves out to the public as representatives of Crown.

BASED upon the findings of fact, the Board makes the following:

CONCLUSIONS OF LAW

1. Respondent Crematory, Respondent Mortuary, Respondent C. Boston, and Respondent D. Boston are subject to jurisdiction before the Board.
2. Respondent Crematory, Respondent Mortuary, Respondent C. Boston, and Respondent D. Boston 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. The acts and omissions of Respondent Crematory, Respondent Mortuary, Respondent C. Boston, and Respondent D. Boston, described in Paragraphs 1-17, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)h. and 90-210.123(g)(8) which prohibit aiding and abetting an unlicensed person to perform funeral services and cremation services, respectively. However, said violations did not have the tendency to cause consumer harm, as Respondents did not hold themselves out as representatives of Crown while engaging in funeral services.
5. The acts and omissions of Respondent Crematory, Respondent Mortuary, Respondent C. Boston, and Respondent D. Boston, described in Paragraphs 1-17, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)j., 90-210.123(g)(10) which prohibit violating any provision of Articles 13A 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. However, said violations did not have the tendency to cause consumer harm, as Respondents did not hold themselves out as representatives of Crown while engaging in funeral services.

FINAL AGENCY DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the North Carolina Board of Funeral Service hereby issues the following decision:

- I. Respondent Crematory, Respondent Mortuary, Respondent C. Boston, and Respondent D. Boston shall be issued a non-disciplinary letter of caution, whereby they are reminded to ensure that they do not aid and abet unlicensed individuals in the practice of funeral service.

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

By: Charles J. Graves
~~Matt Staton~~ Charles J. GRAVES
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:

Cremation Society of Charlotte, Inc.
Donnica A. Boston, Manager
4300 Statesville Road
Charlotte, North Carolina 28269

Clarence Boston
2917 Virginia Avenue
Charlotte, NC 28205

Donnica A. Boston
2917 Virginia Avenue
Charlotte, North Carolina 28205

Boston's Mortuary
Clarence Boston, Manager
4300 Statesville Road
Charlotte, North Carolina 28269

And via U.S. Mail, first class, postage prepaid and addressed as follows to:

Shelesceyah C. McConnell
1827 Alexander Highlands Drive # 208
Charlotte, North Carolina 28262

This, the 19th day of November, 2018.



Catherine E. Lee
General Counsel