

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M17-031

In the matter of:

Mills Funeral Home, Inc. and
Clemonte Mills

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

1. Mills Funeral Home, Inc. (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 391 and Preneed Funeral Establishment No. 225 by the Board 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. Clemonte Mills (hereinafter "Respondent Mills") is licensed as the Funeral Service No. 2468 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 Mills is the licensed manager and owner of Respondent Funeral Home.
4. Pursuant to N.C. Gen. Stat. § 90-210.68(a), on or about October 25, 2017, Board Inspector Terri R. McLean (hereinafter "Inspector McLean") conducted a Preneed Examination of Respondent Funeral Home (hereinafter "Examination").
5. During the Examination, Inspector McLean reviewed approximately sixty-nine (69) active insurance-funded preneed contract files and noted violations of the Board's statutes and rules in approximately fifty (50) of said files.
6. None of the fifty (50) insurance-funded preneed contract identified in Paragraph 5 above appeared to have been filed with the Board, as required by N.C. Gen. Stat. §90-210.67(d) and by 21 N.C. Admin. Code 34D .0105.
7. Six (6) of the sixty-nine (69) preneed contract files reviewed did not contain a copy of the preneed contract, as required by N.C. Gen. Stat. §90-210.68(a) and by 21 N.C. Admin. Code 34D .0301(b) and .0301(c)(5).
8. Inspector McLean also reviewed approximately thirteen (13) closed preneed files.

9. Of those thirteen (13) closed files, Respondents failed to file certificates of performance for approximately nine (9) with the Board, as required by N.C. Gen. Stat. §90-210.64(a) and (e) and by 21 N.C. Admin. Code 34D .0303(b).
10. Several other closed preneed files did not contain copies of the certificates of performance in the files, as required by N.C. Gen. Stat. §90-210.68(a) and 21 N.C. Admin. Code 34D .0301(b).
11. In addition, three (3) of the closed preneed contract files showed no record of payment and/or incorrect calculations, as required by N.C. Gen. Stat. §90-210.62(a).

CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondents, described in Paragraphs 1-11, violate the terms of the Consent Order.
3. The acts and omissions of Respondents, described in Paragraphs 1-11, 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.
4. The acts and omissions of Respondents described in Paragraphs 1-11 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.
5. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. §90-210.67(d) and by 21 N.C. Admin. Code 34D .0105 by failing to file preneed contracts with the Board.
6. The acts and omissions of Respondents described in Paragraphs 1-11 violate N.C. Gen. Stat. §§ 90-210.64(a) and (e) and 21 N.C. Admin. Code 34D .0303(b) by failing to timely file certificates of performance.
7. The acts and omissions of Respondents described in Paragraphs 1-11 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 1-11 violate N.C. Gen. Stat. §§ 90-210.68(a) and 90-210.62(a); and 21 N.C. Admin. Code 34D .0301(b) and .0301(c)(5) that require licensees and establishments to keep copies of contracts,

certificates of performance, payment information, and other documents related to the proper maintenance of preneed files.

13. 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 Mills. If the Board concludes that Respondent Mills 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 Mills on probation and to assess a civil penalty not to exceed \$5,000.00.
14. 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.
15. 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.

BASED upon the foregoing Findings of Fact and Conclusions of Law, and in lieu of further proceedings pursuant to 21 N.C. Admin. Code 34A .0100, Respondents wish 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.

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 Respondents, it is ORDERED that:

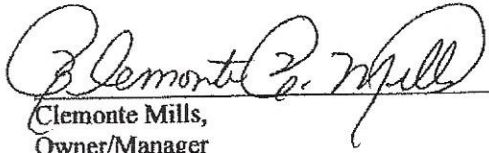
1. The Board hereby suspends the preneed establishment permit and any and all ancillary preneed sales licenses of Respondent Funeral Home for three (3) years, but stays the suspension on the following conditions:
 - a. Respondents admit to the violations;
 - b. Respondents shall provide Board staff with documentation to show that all violations identified in the 2017 Inspection are brought into full compliance with the Board's laws and rules to the satisfaction of Board staff within thirty (30) days following the date of the Consent Order. Respondents shall pay the reinspection fee of \$100 upon any further on-site inspection by Board staff that is necessary to verify that all violations have been corrected. If Respondents fail to comply with this Paragraph 1.b, the stay of the suspension shall be automatically lifted until such violations have been corrected and documented with the Board;
 - c. Following any period of active suspension, Respondent Funeral Home shall be placed on probation for the remainder of said suspension period. 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;
 - d. Respondent Funeral Home shall not violate any law or rule of the Board during the period of suspension;
 - e. Respondent Funeral Home shall timely respond to any and all Board and/or Board staff correspondence;
 - f. Respondent Funeral Home shall comply with all terms of this Consent Order; and
 - g. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of One Thousand (\$1,000.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
2. The Board hereby places on probation the Funeral Service license of Respondent Mills for three (3) year under the following conditions:
 - a. Respondent Mills admits to the violations;

- b. Respondent Mills successfully completes three (3) continuing education credit hours of a preneed course taught by Board staff on or before December 31, 2018;
 - c. Respondent Mills shall not violate any law or rule of the Board during the period of probation;
 - d. Respondent Mills shall timely respond to any and all Board and/or Board staff correspondence; and
 - e. Respondent Mills shall comply with all terms of this Consent Order.
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 Respondents, collectively or individually, have 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.
 4. This Consent Order shall take effect immediately upon its execution by all parties and reflects the entire agreement between Respondents 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 Respondents 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. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
 8. Upon its execution by the Board and Respondents, 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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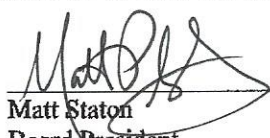
CONSENTED TO:

 Date: Jan 22, 2018
Clemonte Mills,
Owner/Manager
Mills Funeral Home

 Date: Jan 22, 2018
Clemonte Mills

By Order of the North Carolina Board of Funeral Service, this the 14 day of
Feb., 2018.

By:


Matt Staton
Board President

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Order was served upon the following person by email and by depositing a copy with the U.S. Postal Service, via First Class Mail and postage prepaid, addressed to the party to be served as follows:

John Marshall
White & Allen
PO Box 3169
Kinston, NC 28502
jmarshall@whiteandallen.com

This, the 15th day of February, 2018.



Catherine E. Lee
Executive Director and General Counsel