

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M17-036, M17-040, M17-048

In the matter of:)
)
Bryan-Lee Funeral Home,)
P. Alex Lee, Harold Hill, and James S. Lee)
)
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:

FINDINGS OF FACT

1. Respondent Bryan-Lee Funeral Home, located in Garner, North Carolina (hereinafter "Respondent Bryan-Lee – Garner" or collectively with all other Respondent Funeral Homes as "Respondent Funeral Homes"), is licensed by the Board as Funeral Establishment No. 60 and Preneed Establishment No. 217 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
2. Respondent Bryan-Lee Funeral Home, located in Raleigh, North Carolina (hereinafter "Respondent Bryan-Lee – Raleigh" or collectively with all other Respondent Funeral Homes as "Respondent Funeral Homes"), is licensed by the Board as Funeral Establishment No. 657 and Preneed Establishment No. 822 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 Bryan-Lee Funeral Home, located in Angier, North Carolina (hereinafter "Respondent Bryan-Lee – Angier" or collectively with all other Respondent Funeral Homes as "Respondent Funeral Homes"), is licensed by the Board as Funeral Establishment No. 077 and Preneed Establishment No. 711 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
4. Respondent P. Alex Lee (hereinafter "Respondent Alex Lee") is licensed by the Board as Funeral Service No. 385 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. For all time relevant to this Notice of Hearing, Respondent Alex Lee has served as the licensed manager of Respondent Bryan-Lee - Garner. Respondent Alex Lee holds an ancillary preneed sales license for Respondent Funeral Homes.

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5. Respondent Harold Hill (hereinafter "Respondent Hill") is licensed by the Board as Funeral Director No. 162 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. For all times relevant to this Notice of Hearing, Respondent Hill has served as the licensed manager of Respondent Bryan-Lee - Raleigh. Respondent Hill holds an ancillary preneed sales license for Respondent Funeral Homes.
6. Respondent James S. Lee (hereinafter "Respondent J. Lee") is licensed by the Board as Funeral Service No. 2742 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. For all times relevant to this Notice of Hearing, Respondent J. Lee has served as the licensed manager of Respondent Bryan-Lee - Angier. Respondent J. Lee holds an ancillary preneed sales license for Respondent Funeral Homes.
7. The Board contends that, in the event of a hearing, the evidence would be adequate to prove the occurrences set out in the succeeding paragraphs. The Respondents dispute some of the allegations set forth in the Notice of Hearing, as well as any contention of any involvement by persons other than a trusted former employee, but, in view of the time, cost, and uncertainty of a hearing, Respondents consent to the Findings of Fact, Conclusions of Law, and other terms of this Consent Order.

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8. On or about September 7, 2017, Board Inspector Darrell R. Cagle (hereinafter "Inspector Cagle") conducted a preneed examination and audit (hereinafter the "2017 Examination-Garner") of Respondent Bryan-Lee - Garner.
9. During the 2017 Examination-Garner, Inspector Cagle reviewed random preneed contract files held by Respondent Bryan-Lee - Garner to determine compliance with Board statutes and rules.
10. During the 2017 Examination-Garner, Inspector Cagle found that Respondent Bryan-Lee - Garner did not have insurance documentation such as beneficiary assignment form for the preneed contract file of [REDACTED]
11. On or about October 11, 2017, Respondent Bryan-Lee - Garner filed with the Board a Certificate of Performance for a decedent named [REDACTED]. However, according to the Board's records, a preneed agent of Respondent Bryan-Lee - Garner failed to file a preneed contract with the Board on behalf of [REDACTED]. Respondents contend that the failure was an oversight and not intentional.
12. On or about April 21, 2017, Board staff informed Respondent Bryan-Lee - Garner that it had received notification that the preneed contract for Mr. [REDACTED] had been transferred to Respondent Bryan-Lee - Garner on or around September 2016. Board staff directed Respondent Bryan-Lee - Garner to file said contract with the Board within ten

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(10) days, but Respondents did not do so. Respondents performed the service for Mr. [REDACTED] in October 2017.

BOARD CASE NO. M17-040

13. On or about September 7, 2017, Inspector Cagle conducted a preneed examination and audit (hereinafter the “2017 Examination-Raleigh”) of Respondent Bryan-Lee - Raleigh.
14. During the 2017 Examination-Raleigh, Inspector Cagle reviewed random preneed contract files held by Respondent Bryan-Lee – Raleigh to determine compliance with Board statutes and rules.
15. During the 2017 Examination-Raleigh, Inspector Cagle found Respondent had not filed the Certificates of Performance or otherwise informed the Board regarding the contract’s lapse for the following individuals:
 - a. [REDACTED] whose date of death was November 8, 2006 (the contract was refused by the insurance carrier); and
 - b. [REDACTED] whose date of death was December 12, 2012 (the policy had lapsed due to non-payment).
16. On or about March 30, 2017, Respondent Bryan-Lee – Raleigh filed with the Board a Certificate of Performance for a decedent named [REDACTED] who is a family member of one Respondent. However, according to the Board’s records, Respondent Bryan-Lee – Raleigh never filed a preneed contract with the Board on behalf of Ms. [REDACTED]
17. Respondents made preneed arrangements with [REDACTED] and with his brother [REDACTED] [REDACTED] at the Garner facility on the same day. The contract of [REDACTED] was filed with the Board. Respondents failed to file a copy of the contract of [REDACTED] with the Board. Respondents carried out the service for [REDACTED] on October 12, 2017 at the Raleigh facility and filed the Certificate of Performance on October 27, 2017.

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18. On or about November 27, 2017, Inspector Cagle conducted a preneed examination and audit (hereinafter “2017 Examination-Angier”) of Respondent Bryan-Lee – Angier.
19. During the 2017 Examination-Angier, Inspector Cagle reviewed random files held by Respondent Bryan-Lee – Angier to determine compliance with Board statutes and rules.
20. During the 2017 Examination-Angier, Inspector Cagle found that Respondent Bryan-Lee – Angier failed to file the preneed contract of [REDACTED] with the Board office. Inspector Cagle’s directed Respondent Bryan-Lee – Angier to file the contract, along with

the appropriate filing fees, with the Board immediately. Said contract was filed in May 2018.

21. Respondents P. Alex Lee, Harold Hill, and James S. Lee remain fit to practice. Since the issuance of the Notice of Hearing, Respondent Funeral Homes have provided the Board with additional information with regard to the deficiencies described in the Notice and is taking corrective action to address the deficiencies identified in the 2017 Examinations, as well as other deficiencies identified through a full-scale internal audit. Among the information provided is the location of records among the three facilities, the contact information for licensees charged with oversight of preneed documentation, the new staff in place to address recordkeeping and the concerns of the Board, and the division of responsibilities among the licensees of the Board.

CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondent Funeral Homes described above constitute failure to properly maintain accurate and complete preneed records, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(a), (b), and (c)(5).
3. The acts and omissions of Respondent Funeral Homes described above constitute failure to file with the Board preneed contracts and the required filing fees within ten (10) days following the date of sale, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 N.C. Admin. Code 34D .0105.
4. The acts and omissions of Respondent Funeral Homes described in Paragraphs 1-27 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.
5. The acts and omissions of Respondents described in Paragraphs 1-27 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., 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.
6. 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 Homes, to place Respondent Funeral Homes on probation, and to assess a civil penalty not to exceed \$5,000.00.
7. 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 service license of Respondents Alex Lee, and J. Lee. If the Board concludes that Respondents Alex Lee, and J. Lee committed one or more of the aforementioned violations but remains fit to practice, pursuant to N.C. Gen.

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Stat. § 90-210.25(e)(2), the Board has the authority to place Respondents Alex Lee, and J. Lee on probation and to assess a civil penalty not to exceed \$5,000.00.

8. 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 Harold Hill. If the Board concludes that Respondent Harold Hill committed one or more 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 Harold Hill 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), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed sales license of Respondents P. Alex Lee, Harold Hill, and James S. Lee, or to place Respondents P. Alex Lee, Harold Hill, and James S. Lee 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)(6) and (d) 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 Homes, or to place Respondent Funeral Homes 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, 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:

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1. The Board hereby places on probation for two (2) years the preneed establishment permits and any and all ancillary preneed sales licenses of Respondent Funeral Homes, on the following terms and conditions:
 - a. Within thirty (30) days from the date this Consent Order takes effect, Respondent shall correct all deficiencies identified in the 2017 Examinations and in its own full-scale internal audit, including but not limited to, filing all preneed contracts that have not been timely filed with the Board; filing all certificates of performance that have not been timely filed with the Board; and remitting all fees and late fees owed to the Board as a result of the untimely filings. Deficiencies that are corrected within this thirty (30) day period shall not be considered a violation of this Consent Order.
 - b. Respondent Funeral Homes shall not violate any law or rule of the Board during the period of suspension;
 - c. Respondent Funeral Homes shall timely respond to any and all Board and/or Board staff correspondence;
 - d. Respondent Funeral Homes shall comply with all terms of this Consent Order; and
 - e. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Homes 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.
2. The Board hereby puts on probation the Funeral Service License of Alex Lee for two (2) year, on the following terms and conditions:
 - a. Respondent Alex Lee shall not violate any law or rule of the Board during the period of probation;
 - b. Respondent Alex Lee shall timely respond to any and all Board and/or Board staff correspondence; and
 - c. Respondent Alex Lee shall comply with all terms of this Consent Order.
3. The Board shall issue a non-disciplinary letter of caution to Respondents J. Lee and H. Hill, reminding them of their obligations to comply with the statutes and rules governing the practice of preneed funeral service. Respondents Alex Lee, Hill, J. Lee and the three central office staff most involved with preneed contracts and compliance will voluntarily attend a Board-sponsored continuing education course on preneed review on or before December 31, 2019.

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4. The Respondents agree that communications from the Board to either of the Respondent Funeral Homes will be promptly delivered if transmitted to Alex Lee at the Garner location.
5. 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.
6. 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.
7. 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.
8. Both the Board and Respondents were represented by counsel and 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.
9. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
10. 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:

Bryan Lee Funeral Home

P. Alex Lee Date: 8/2/18
P. Alex Lee,
Manager

P. Alex Lee Date: 8/2/18
P. Alex Lee

Bryan Lee Funeral Home

Harold Hill Date: 8/2/18
Harold Hill,
Manager

Harold Hill Date: 8/2/18
Harold Hill

Bryan Lee Funeral Home

James S. Lee Date: 8/2/18
James S. Lee,
Manager

James S. Lee Date: 8/2/18
James S. Lee

By Order of the North Carolina Board of Funeral Service, this the 15 day of August, 2018.

By:

Matt Staton
Matt Staton
Board President