

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M17-038; C17-070

In the matter of:)
)
Hart Funeral Service, Inc. and)
Darryl J. Hart,)
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. Hart Funeral Service, Inc. (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 232 and Preneed Funeral Establishment No. 165 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. Darryl J. Hart (hereinafter "Respondent Hart" or, collectively with Respondent Funeral Home, "Respondents") is licensed as Funeral Service Licensee No. 1491 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). Respondent Hart holds a preneed sales license on behalf of Respondent Funeral Home.
3. Respondent Hart is the licensed manager of Respondent Funeral Home.

CONSUMER COMPLAINT NO. C17-070

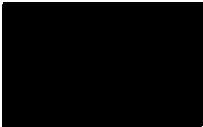
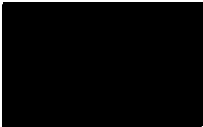
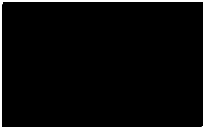
4. On October 2, 2017, Board staff received a complaint from Nian W. Avery (hereinafter "Complainant Avery").
5. Complainant Avery is licensed as Funeral Service Licensee No. 845 and is a former employee of Respondent Funeral Home.
6. Complainant Avery alleged that Celeste Tapscott, an unlicensed employee of Respondent Funeral Establishment, forged his signature on several documents including, a death certificate, a cremation authorization form and a Statement of Goods and Services Selected.
7. Board staff attempted service of the Complaint via USPS Certified Mail, return receipt requested; however, the letter was returned to the Board office as unclaimed.

In the Matter of Hart Funeral Service, Inc., et al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 2

8. On November 1, 2017, Board Inspector Brett Lisenbee (hereinafter "Inspector Lisenbee") and Board Inspector Terri McLean (hereinafter "Inspector McLean" or collectively with Inspector Lisenbee "Inspectors") served a copy of the Complaint on Respondents.
9. While at Respondent Funeral Home, Inspectors conducted an investigation (hereinafter the "Investigation") regarding the allegations of the Complaint.
10. During the Investigation, Respondents indicated that, once made aware of the allegations of the Complaint, Celeste Tapscott's employment with Respondent Funeral Home was terminated.
11. On November 2, 2017, Board Inspectors interviewed Complainant Avery. During the interview, Complainant Avery stated that his signature had been forged on one or more documents pertaining to services provided for:

- a. 
- b. 
- c. 

BOARD CASE NO. M17-038

12. On or about November 1 and 2, 2017, Inspector McLean conducted a Funeral Establishment Inspection (hereinafter "2017 Inspection" and a Preneed Examination (hereinafter "2017 Examination") of Respondent Funeral Home.
13. During the 2017 Inspection, Inspector McLean noted violations of the Board's statutes and rules, as follows:
 - a. Respondent's Statement of Funeral Goods and Services Selected did not have the required disclosures, pursuant to the FTC Funeral Rule;
 - b. Board Form 56D, "Delivery of Cremated Remains," was not found in the following closed preneed contract files:
 - i. 
 - ii. 
 - iii. 
14. During the 2017 Examination, Inspector McLean noted violations of the Board's statutes and rules governing the practice of preneed funeral service, as follows:
 - a. The previous preneed examination report was not available;

In the Matter of Hart Funeral Service, Inc., et.al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 3

- b. No Statement of Funeral Goods and Services Selected signed by a Funeral Director was retained in the individual file of [REDACTED]
- c. No beneficiary designation document or instrument of assignment was retained in the individual files of [REDACTED]
- d. No copy of a check made payable to the Estate of decedent [REDACTED] for monies owed, nor a Certificate of Performance, was contained within the closed preneed file of [REDACTED]. Moreover, the preneed trustee had failed to properly calculate the amount of monies owed to the Estate of decedent [REDACTED]
- e. No Preneed contract, no Statement of Funeral Goods and Services Selected, and no Certificate of Performance was found in the closed preneed contract file of [REDACTED]
- f. The credits owed to the estates of decedents [REDACTED] pursuant to a performed inflation-proof preneed contract, were not calculated properly; and
- g. A preneed contract for [REDACTED] had been reported erroneously to the Board as closed when, in fact, it still was active.

CONCLUSIONS OF LAW

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondents described in Paragraphs 1-14, including all subparts, 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 Hart described in Paragraphs 1-14 violate N.C. Gen. Stat. §§ 90-210.27A(e) and 90-210.25(d)(2)a. for failing to actively manage and oversee the daily operations of Respondent Funeral Home.
4. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-14, including all subparts, violate N.C. Gen. Stat. § 90-210.25(e)(1)h. for allowing a non-licensed staff member to engage in the practice of funeral service.
5. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-14, including all subparts, violate N.C. Gen. Stat. § 90-210.25(e)(2) by failing to have proper disclosures listed on Respondent Funeral Home's Statement of Funeral Goods and Services Selected.

In the Matter of Hart Funeral Service, Inc., et al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 4

6. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-14, including all subparts, violate N.C. Gen. Stat. § 90-210.127 and 21 NCAC 34C .0303(c) by failing to retain Board Form 56D.
7. The acts and omissions of Respondent Funeral Home described in Paragraphs 1-14, including all subparts, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (c)(5) for failure to properly maintain files containing copies of certificates of performance, at-need statement of funeral goods and services, beneficiary designations documents, and instruments of assignment.
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 service license of Respondent Hart. If the Board concludes that Respondent Hart has 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 Hart on probation and to assess a civil penalty not to exceed \$5,000.00.
9. 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, 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. §§ 90-210.69(c), (d) and (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, to place Respondent Funeral Home on probation, and to assess a civil penalty not to exceed \$5,000.00.
11. 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 Respondent Hart, to place Respondent Hart 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;

In the Matter of Hart Funeral Service, Inc., et al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 5

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 Preneed Establishment Permit and the Funeral Establishment Permit of Respondent Funeral Home is suspended for three (3) years, but said suspension is stayed on the following conditions:
 - a. Respondent Funeral Home admits to the violations herein;
 - b. Respondent Funeral Home shall be placed on probation during the period of stayed suspension. 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;
 - c. Within thirty (30) days from the date this Consent Order take effect, Respondent Funeral Home shall send to the Board evidence showing that the proper refund has been issued to the Estate of decedent [REDACTED]
[REDACTED]
 - 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 Two Thousand (\$2,000.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.

In the Matter of Hart Funeral Service, Inc., et al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 6

2. The Board hereby suspends the Funeral Service license of Respondent Hart for three (3) year, but the Board stays the suspension on the following conditions:
 - a. Respondent Hart admits to the violations herein;
 - b. Respondent Hart shall be placed on probation for three (3) year, beginning from the date this Consent Order takes effect;
 - c. Respondent Hart shall not violate any law or rule of the Board during the period of probation;
 - d. Respondent Hart shall timely respond to any and all Board and/or Board staff correspondence;
 - e. Respondent Hart shall comply with all terms of this Consent Order; and
 - f. Within thirty (30) days from the date this Consent Order takes effect, Respondent Hart shall pay a compromise penalty of Five Hundred (\$500.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
3. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral shall replace Respondent Hart with another licensed manager, and must inform the Board in writing as to the name and contact information of the replacement licensed manager. Respondent Hart agrees not to serve as a licensed manager of any establishment in the future.
4. 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.
5. 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.
6. 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.

In the Matter of Hart Funeral Service, Inc., et al.
Board Case Nos. M17-038; C17-070
Consent Order
Page | 7

- 7. 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.
- 8. Respondents hereby waive any requirement under any law or rule that this Consent Order be served upon them.
- 9. 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.

CONSENTED TO:

Hart Funeral Service, Inc.



Darryl J. Hart
Owner/Manager


Date: 6/6/18



Darryl J. Hart

Date: 6/6/18

By Order of the North Carolina Board of Funeral Service, this the 12th day of June, 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:

Hart Funeral Service, Inc.
60 Phifer St
Asheville, NC 28801
hartfuneralsvc@outlook.com

Darryl Jay Hart
5 Williamsburg Place
Asheville, NC 28803
hartfuneralsvc@outlook.com

This, the 13 day of June 2018.



Catherine E. Lee
General Counsel