

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NOS. M17-045, C17-057, and
C17-063

In the matter of:

Howell Funeral Services of Pilot Mountain, Inc.
d/b/a Howell-Nelson Funeral Service & Crematory
and Ralph D. Howell, Sr.,

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. Howell Funeral Services of Pilot Mountain, Inc. d/b/a Howell-Nelson Funeral Service & Crematory (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 723 and Preneed Funeral Establishment No. 832 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. Howell Funeral Services of Pilot Mountain, Inc. d/b/a Howell-Nelson Funeral Service & Crematory (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 723, Preneed Funeral Establishment No. 832, and Crematory Permit No. 56 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).
3. Ralph D. Howell, Sr. (hereinafter "Respondent Howell" or, collectively with Respondent Funeral Home, "Respondents") is licensed as the Funeral Service Licensee No. 2236 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 Howell holds a preneed sales license on behalf of Respondent Funeral Home.
4. Respondent Howell is the licensed manager and the crematory manager of Respondent Funeral Home.

C17-057

5. On or about August 24, 2017, the Board received a consumer complaint from [REDACTED] who had purchased a preneed from Respondent Funeral Home on December 23, 2016. However, the check she remitted to Respondent Funeral Home for

the insurance policy used to fund the contract was not negotiated until May 2017. At the time [REDACTED] submitted her consumer complaint to the Board, the check she had made payable to the Board in the amount of \$20 for the preneed contract filing fee had not been negotiated and her preneed contract had not been registered with the Board.

6. On or about September 8, 2017, Respondent Funeral Home submitted to the Board a response to [REDACTED]'s consumer complaint. Respondent Funeral Home alleges that it had timely mailed [REDACTED]'s preneed contract to the Board and that it was unaware that the Board had not received [REDACTED]'s preneed contract. Respondent Funeral Home further alleges that it inadvertently mailed [REDACTED]'s payment for an insurance policy to the wrong address for the insurance company used to fund the contract.
7. To date, the Board has not received from Respondent Funeral Home the required \$20 filing fee, and the \$25 late fee, for the filing of [REDACTED]'s preneed contract.

C17-063

8. On or about September 11, 2017, the Board received a consumer complaint from [REDACTED] who, as power of attorney for her mother, had purchased a preneed from Respondent Funeral Home on November 10, 2016. However, the check she remitted to Respondent Funeral Home for the insurance policy used to fund the contract was not negotiated until March 2017. At the time [REDACTED] submitted her consumer complaint to the Board, the check she had made payable to the Board in the amount of \$20 for the preneed contract filing fee had not been negotiated and her preneed contract had not been registered with the Board.
9. According to the United States Postal Service, a copy of [REDACTED]'s consumer complaint was served on Respondent Funeral Home on September 15, 2017. To date, the Board has not received a response from Respondent Funeral Home to the allegations set forth in [REDACTED]'s complaint.
10. To date, the Board has not received from Respondent Funeral Home the required \$20 filing fee, and the \$25 late fee, for the filing of [REDACTED]'s preneed contract.

M17-045

11. After the Board received Consumer Complaint Nos. C17-057 and C17-063, Board Inspector Darrell Cagle (hereinafter "Inspector Cagle") conducted a Funeral Establishment Inspection and a Preneed Examination of Respondent Funeral Home on or about September 26, 2017, and conducted a Crematory Inspection of Respondent Funeral Home on or about November 28, 2017 (hereinafter "2017 Inspection").

12. During the 2017 Inspection, Inspector Cagle noted violations of the Board's statutes and rules, as follows:

- a. The most recent financial statements for insurance policies not sold by the licensee were not available for review;
- b. Respondents' records showed evidence of comingling entrusted preneed funds and operating funds, as multiple files contained checks made to insurance companies from the Respondent Funeral Home's general operating account;
- c. No beneficiary designation document or instrument of assignment was retained in the preneed contract files for [REDACTED] and [REDACTED];
- d. No documentation was available to determine the final disposition of preneed contract funds for the closed preneed contract files of [REDACTED], [REDACTED], and [REDACTED];
- e. No evidence that proper credit for cash advance/sales tax was found in the closed individual file of [REDACTED];
- f. No correctly completed at-need statement of funeral goods and services was found in the individual files of the following:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
 - iv. [REDACTED]
- g. Certificates of performance were not retained in the individual files of the following:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
 - iv. [REDACTED]
 - v. [REDACTED]
 - vi. [REDACTED]
- h. Certificates of performance were not filed with the Board for the following:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
 - iv. [REDACTED]

- i. Records showed that a refund of \$357.20 was due to the estate of [REDACTED] but had not been paid;
- j. Records showed that a refund of \$1,213.31 was due to the estate of [REDACTED] but was instead paid to the purchaser of [REDACTED]'s preneed contract;
- k. Signed death certificates were not retained in the cremation files of the following:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
- l. Cremation files were not found for the following:
 - i. [REDACTED]
 - ii. [REDACTED]
 - iii. [REDACTED]
- m. The cremations of the following were not reported to the Board in Respondent Funeral Home's August 2017 cremation report:
 - i. [REDACTED]
 - ii. [REDACTED]

13. Board Preneed Program Assistant Lyn Cochrane made four attempts to contact Respondents by U.S. Mail sent to Respondent Funeral Home's address of record regarding its failure to submit certificates of performance with its 2016 Preneed Annual Report for the following individuals: [REDACTED]

[REDACTED] To each of the four attempts made between June and December 2017, Ms. Cochrane received no filed certificates of performance for said individuals. To date, and despite being informed of the same in the 2017 Inspection, Respondents have failed to submit the required certificates of performance to the Board.

CONCLUSIONS OF LAW

14. The acts and omissions of Respondents, described in Paragraphs 1-13, 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.

15. The acts and omissions of Respondents described in Paragraphs 1-13 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.
16. The acts and omissions of Respondents described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.61(e) for commingling funds.
17. The acts and omissions of Respondents described in Paragraphs 1-13 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.
18. The acts and omissions of Respondents described in Paragraphs 1-13 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.
19. The acts and omissions of Respondents described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
20. The acts and omissions of Respondents described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b), (c)(4) and (c)(5) for failure to properly maintain files containing copies of certificates of performance, at-need statement of funeral goods and services, records from financial institutions in which trust funds are deposited, beneficiary designations documents, and instruments of assignment.
21. The acts and omissions of Respondents, described in Paragraphs 1-13, violate N.C. Gen. Stat. § 90-210.123(g)(10), which prohibits violating any provision of Article 13F of Chapter 90 of the North Carolina General Statutes and all rules and regulations of the Board.
22. The acts and omissions of Respondents described in Paragraphs 1-13 violate N.C. Gen. Stat. § 90-210.129(a) for failure to retain signed death certificates for all cremation files.
23. The acts and omissions of Respondents described in Paragraphs 1-13 violate 21 NCAC 34C .0305 for failure to remit the per-cremation fees under 21 NCAC 34A .0201(b) and to report, for each cremation performed, the decedent's name, the date of each cremation, the person or other entity for whom each cremation was performed, the number of cremations contained in the report and the total amount of fees remitted within the report.
24. 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 Howell. If the Board concludes that Respondent Howell 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 Howell on probation and to assess a civil penalty not to exceed \$5,000.00.

25. 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.
26. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c) 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, or to place Respondent Funeral Home on probation, and to assess a civil penalty not to exceed \$5,000.00.
27. Pursuant to N.C. Gen. Stat. §§ 90-210.123(g), the Board has the authority to revoke, suspend, or refuse to issue or renew the crematory permit of Respondent Funeral Home. If the Board concludes that Respondents committed any of the aforementioned violations, but remain fit to practice, the Board has the authority to place Respondents 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 and the crematory permit of Respondent Funeral Home for three (3) years, but stays the suspension on the following conditions:
 - a. Respondents admit to the violations;
 - b. Within six (6) months from the effective date of this Consent Order, Respondent Funeral Home must pass a re-audit by a Board inspector without substantial deficiencies or the stay of suspension shall be lifted until such time as a Show Cause Hearing can be properly noticed and held;
 - c. Respondent Funeral Home shall be placed on probation during the period of 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;
 - d. Within ten (10) days from the effective date of this Consent Order, Respondents file with the Board the preneed contracts for [REDACTED] and [REDACTED], each along with the appropriate Twenty Dollar (\$20.00) filing fee and a Twenty-Five Dollar (\$25.00) late fee.
 - e. Respondent Funeral Home shall not violate any law or rule of the Board during the period of suspension;
 - f. Respondent Funeral Home shall timely respond to any and all Board and/or Board staff correspondence;
 - g. Respondent Funeral Home shall comply with all terms of this Consent Order; and
 - h. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of Three Thousand Dollars (\$3,000.00) 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 suspends the Funeral Director license of Respondent Howell for three (3) year, but the Board stays the suspension on the following conditions:
 - a. Respondent Howell admits to the violations;
 - b. Respondent Howell shall be placed on probation for three (3) years, beginning from the date this Consent Order takes effect;

- c. Respondent Howell shall not violate any law or rule of the Board during the period of probation;
 - d. Respondent Howell shall timely respond to any and all Board and/or Board staff correspondence; and
 - e. Respondent Howell 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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NC Board of Funeral Service

In the Matter of: Howell Funeral Services of Pilot Mountain, Inc. d/b/a Howell-Nelson Funeral Service & Crematory and Ralph Howell, Respondents, Case No. M17-045, C17-057, C17-063

Consent Order

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CONSENTED TO:

Howell Funeral Service, Inc.

Ralph D. Howell

Date:

3-14-2018

Ralph D. Howell
Manager

Ralph D. Howell

Date:

3-14-2018

Ralph D. Howell

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

By:

Matt Staton
Matt Staton
Board President

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Consent Order** upon the following named persons by email and depositing a copy of the foregoing document in the United States Mail as follows:

Howell Funeral Services of Pilot Mountain, Inc. d/b/a Howell-Nelson Funeral Service &
Crematory
Ralph Douglas Howell, Manager
615 E. Highway #52 Bypass
Pilot Mountain, NC 27041
hfs_pilot@yahoo.com

This the 15th day of March, 2018.



Catherine E. Lee