

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NOS. M17-045, C17-057, C17-063,  
M18-032, C18-026, C18-040, C18-041, C18-  
044, C18-045

## CONSENT ORDER

### Respondents.

## FINDINGS OF FACT

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, 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).
2. 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.
3. Respondent Howell is the licensed manager and the crematory manager of Respondent Funeral Home.

**M18-032**

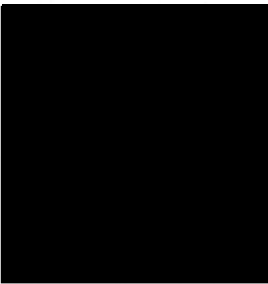
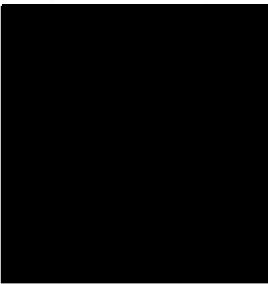
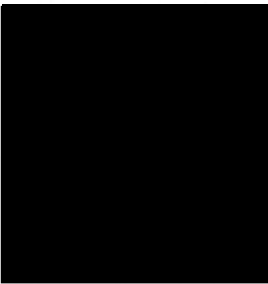
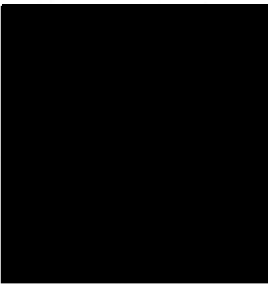
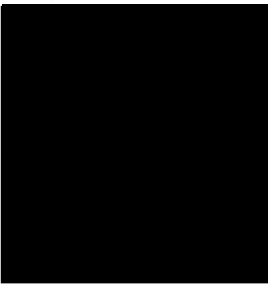
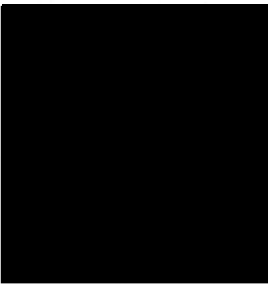
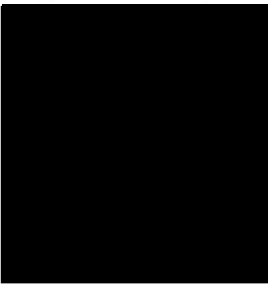
4. On March 14, 2018, Respondents and the Board entered into a Consent Order resolving the terms of Board Case Nos. M17-045, C17-057, and C17-063. The terms of said Consent Order provided, in part, the following:
1. The Board hereby suspends the preneed establishment permit and any and all ancillary 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:

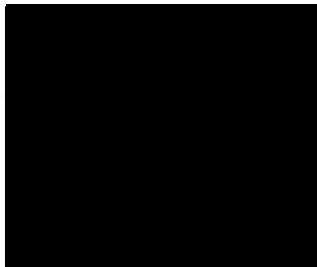
- a. Respondents admit to the violations;
- b. Within six (6) months from the effective date of this Consent Order, Respondent Funeral Home must pass a re-audit by a Board inspector without substantial deficiencies or the stay of suspension shall be lifted until such time as a Show Cause Hearing can 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;

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- 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;
- 5. Respondent Crematory did not submit its monthly cremation reports for January 2018, February 2018, March 2018, April 2018 or May 2018.
  - 6. On February 19, 2018, Board staff sent correspondence to Respondent Crematory regarding their failure to submit the required January 2018 cremation report.
  - 7. On March 15, 2018 and April 2, 2018, Board staff sent correspondence to Respondent Crematory regarding their failure to submit the required February 2018 cremation report.
  - 8. On May 15, 2018, Board staff sent correspondence to Respondent Crematory regarding their failure to submit the required March 2018 and April 2018 cremation report.
  - 9. Board staff received no timely response from Respondent Crematory to any of its correspondence sent from February 2018 through May 2018 regarding its unfiled monthly cremation reports.
  - 10. On or about September 25, 2018, Board staff received from Respondent Crematory the unfiled crematory reports and required fees for the missing 2018 cremation reports.

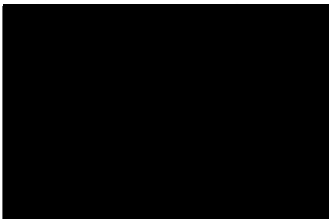
11. To date, Respondent Funeral Home has not yet submitted its 2017 Preneed Annual Report, which was due on March 31, 2018.
12. On August 9, 2018, Board Inspector Darrell Cagle submitted a preneed examination and audit report of Respondent Funeral Home ("August 2018 Examination").
13. In the August 2018 Examination, Inspector Cagle reviewed all available active preneed contract files and certain available closed preneed contract files held by Respondent Funeral Home to determine compliance with the Board's statutes and rules.
14. In the August 2018 Examination, Inspector Cagle found that Respondent Funeral Home failed to procure or retain year-end status reports from the following insurance companies:
  - a. AARP Life
  - b. Allianz
  - c. Assurant Preneed
  - d. Assurity Life
  - e. Auto-Owners Life Insurance
  - f. Columbian Life
  - g. Great Western Insurance Company
  - h. Investors Heritage
  - i. Nationwide Life
  - j. NGL
  - k. Old American Insurance
  - l. Physicians Life
  - m. Shenandoah Life Insurance Company
  - n. State Farm Life
  - o. United of Omaha Life Insurance
15. In the August 2018 Examination, Inspector Cagle found that Respondent Funeral Home could not produce the active preneed contract files for the following individuals:
  - a. 
  - b. 
  - c. 
  - d. 
  - e. 
  - f. 
  - g. 
16. In the August 2018 Examination, Inspector Cagle found that Respondent Funeral Home could not produce the closed preneed contract files for the following individuals:

- a.
- b.
- c.
- d.
- e.
- f.



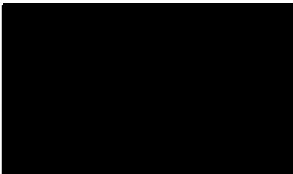
17. In the August 2018 Examination, Inspector Cagle found that Respondent Funeral Home had not maintained an at-need Statement of Funeral Goods and Services Selected in the closed preneed contract files for the following individuals:

- a.
- b.
- c.
- d.
- e.



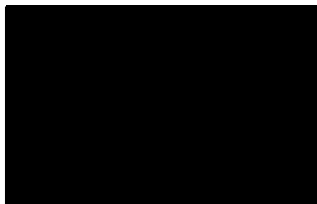
18. In the August 2018 Examination, Inspector Cagle found that no record of disposition or Certificate of Performance was maintained in the closed preneed contract files for the following individuals:

- a.
- b.
- c.
- d.



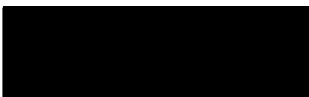
19. In the August 2018 Examination, Inspector Cagle found that no Certificate of Performance was maintained in the closed preneed contract files for the following individuals:

- a.
- b.
- c.
- d.
- e.



20. In the August 2018 Examination, Inspector Cagle found that insufficient documentation was maintained in the closed inflation-proof preneed contracts for the following individuals, so that he could not determine if Respondent Funeral Home had correctly calculated credits for cash advance and sales tax and could not determine if any refunds were due:

- a.
- b.





c. [REDACTED]

21. In the August 2018 Examination, Inspector Cagle found that Certificates of Performance were maintained in the closed preneed contract files but had not been filed with the Board office for the following individuals:

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

22. In the August 2018 Examination, Inspector Cagle found that Respondent Funeral Home had entered into preneed contract with the following individuals, but never filed said contracts with the Board:

a. [REDACTED]

b. [REDACTED]

C18-026

23. On or about April 5, 2018, the Board staff received a complaint from a consumer named [REDACTED]

24. In the Complaint, [REDACTED] informed the Board staff that he had paid Respondents for a copy of a death certificate for a loved one who had died on or around November 22, 2017 but never received a copy from Respondents.

25. In response to the Complaint, Respondents admitted that they failed to timely provide a copy of the death certificate to [REDACTED] but provided a copy to him shortly after he filed the Complaint with the Board on April 5, 2018.

C18-040

26. On or about May 8, 2018, the Board staff received a complaint from a consumer named [REDACTED]

27. In the Complaint, [REDACTED] informed the Board staff that he had paid Respondents for two (2) copies of a death certificate for his mother, who died on February 9, 2018.

28. [REDACTED] attempted to contact Respondents fifteen (15) times between February 9, 2018 and May 7, 2018, in an effort to obtain the two (2) copies of the ordered death certificates.

29. Respondents also failed to report the death of [REDACTED]'s mother to the Social Security Administration, after informing [REDACTED] that they would do so.

30. In response to the Complaint, Respondents admitted that they had failed to timely provide copies of the death certificate and had failed to contact the Social Security Administration regarding the death of [REDACTED]'s mother. Respondents refunded [REDACTED] an amount of Twenty-Four Dollars (\$24.00) on or about June 29, 2018.

C18-041

31. On or about May 9, 2018, the Board staff received a complaint from an attorney, [REDACTED] on behalf of his client, [REDACTED].
32. In the Complaint, Mr. Overby informed the Board staff that [REDACTED] had paid Respondents to provide a certified copy of a death certificate to him for [REDACTED]'s mother, who died on January 16, 2018. However, Respondents failed to provide a copy of the certificate death certificate to [REDACTED], the NC Vital Records, or the Stokes County Register of Deeds until May 10, 2018.
33. In response to the Complaint, Respondents admitted that the death certificates for [REDACTED]'s mother had not been ordered until February 2, 2018 and were not sent to [REDACTED] until after the Complaint had been submitted to the Board.

C18-044

34. On or about May 29, 2018, the Board staff received a complaint from a consumer named [REDACTED].
35. In the Complaint, [REDACTED] informed the Board staff that he had paid Respondents for three (3) certified copies of death certificates on behalf of his wife, who died on April 12, 2018.
36. [REDACTED] attempted to reach Respondents by phone on ten (10) separate occasions and made thirteen (13) trips to Respondent Funeral Home, in an effort to obtain the three (3) copies of the ordered death certificates.
37. In response to the Complaint, Respondents admitted that they had failed to timely provide the ordered death certificates and indicated that the death certificates were provided to [REDACTED] on or around June 5, 2018.

C18-045

38. On or about May 30, 2018, the Board staff received a complaint from a consumer named [REDACTED].

39. In the Complaint, [REDACTED] informed the Board staff that she had entered into a preneed contract with Respondent Funeral Home, but that the preneed contract never was filed with the Board.
40. On or about August 17, 2018, the Board received the preneed contract on behalf of [REDACTED] from the Respondent Funeral Home.

#### **Subsequent Board Action**

41. On June 13, 2018, the Board issued an Order that lifted the stay of the licensure suspension placed on the crematory permit and the preneed establishment permit held by Respondent Funeral Home, pursuant to the Consent Order entered into by the parties in March 2018. To date, both permits remain suspended.

#### **Respondents' Remedial Efforts**

42. Respondent Funeral Home has made concerted efforts since June 2018 to address the deficiencies set forth in the August 2018 Examination and the consumers complaints identified in this Consent Order. Further, Respondent Funeral Home has made staffing changes to revise internal work procedures that are intended to prevent future deficiencies of the kind set forth in this Consent Order.

#### **CONCLUSIONS OF LAW**

1. Respondents are subject to jurisdiction before the Board.
2. The acts and omissions of Respondents described in Paragraphs 1-42 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 Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
4. The acts and omissions of Respondents described in Paragraphs 1-42 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.
5. The acts and omissions of Respondents described in Paragraphs 1-42 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.

6. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(c)(5) by failing to maintain financial statements for insurance policies funding preneed contracts.
7. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(c)(5) by failing to maintain all documents required for active preneed contract files.
8. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. 90-210.67(d) and 21 N.C. Admin. Code 34D .0105 by failing to file all preneed contracts and required filing fees with the Board within ten (10) days of the sale.
9. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(b) by failing to maintain all documents required in closed preneed contract files, including but not limited to at-need Statements of Funeral Goods and Services Selected, records of disposition of funds, and certificates of performance.
10. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(b) by failing to file with the Board a certificate of performance within ten (10) days from receipt of payment.
11. The acts and omissions of Respondents described in Paragraphs 1-42 violate N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0302, which requires every preneed licensee to submit a preneed annual report to the Board by March 31 of each year, setting forth information on its preneed funeral contract sales and performance of such contracts.
12. 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.
13. 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.

14. 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.
15. 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, 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 at-need, 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. 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;
  - c. Respondent Funeral Home shall not violate any law or rule of the Board during the period of suspension;
  - d. Respondent Funeral Home shall timely respond to any and all Board and/or Board staff correspondence;
  - e. Respondent Funeral Home shall comply with all terms of this Consent Order;
  - f. Within One Hundred Eighty (180) days from the date this Consent Order takes effect, Respondent Funeral Home shall hire a licensed manager other than Respondent Howell to oversee its establishment and crematory permits. Respondent Funeral Home shall inform the Board of the identity of the new licensed manager immediately upon his or her hire. Respondent Funeral Home shall provide a copy of this Consent Order to the licensed manager immediately upon his or her hire. Until a new licensed manager is hired, Respondent Funeral Home shall retain the services of Kathleen Duncan, Senior Professional Consultant Services, of Brass Balls Global to assist in the operational oversight of Respondent Funeral Home. In the event that Ms. Duncan's services for Respondent Funeral Home terminate, Respondent Funeral Home shall notify the Board in writing immediately; 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 Five Hundred Dollars (\$2,500.00) 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 agrees that, within One Hundred Eighty (180) days from the date that this Consent Order takes effect and during the period of stayed suspension, he shall not serve as the licensed manager of any establishment or crematory licensed by the Board;
  - e. Respondent Howell shall timely respond to any and all Board and/or Board staff correspondence; and
  - f. 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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CONSENTED TO:

Howell Funeral Service, Inc.

Ralph D. Howell

Ralph D. Howell  
Manager

Date: 11/08/18

Ralph D. Howell

Ralph D. Howell

Date: 11/08/18

By Order of the North Carolina Board of Funeral Service, this the 14<sup>th</sup> day of Nov, 2018.

By:

Charles J. Graves

~~Matt Staton~~

Board President

Charles J. Graves



CERTIFICATE OF SERVICE

I hereby certify that a copy of the Consent Order was sent by email and by United States Postal Service, first-class mail, postage prepaid, addressed to:

Robert O. Crawford, III  
4242 Six Forks Road, Ste 1550  
Raleigh, NC 27609  
bob@crawfordlaw.biz

*Attorney for the Respondents*

This the 19 day of November, 2018.



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Catherine E. Lee