

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M18-012

In the matter of:)
)
Whitfield & Whitley Funeral Home and)
Essie Mae McCarter,)
Respondents.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL AGENCY DECISION

In accordance with N.C. Gen. Stat. § 150B-40(d), the North Carolina Board of Funeral Service (hereinafter the “Board”) issues the following Findings of Fact, Conclusions of Law, and Final Agency Decision in this matter.

The record reflects that a quorum of the Board was present at the hearing held and at the time the Board made this decision on January 9, 2019. The record further reflects that Board members Valdus Lockhart and Steve Herndon did not participate in the hearing or deliberations of this case because they served on the Board’s Disciplinary Committee at the time this particular matter was reviewed. Board members Matt Staton and Charles Graves were absent. Catherine E. Lee, General Counsel, appeared for Board staff. Jeff Gray appeared as administrative law counsel for the Board. Respondents did not appear at the hearing.

Before the hearing, the following inquiry was read aloud in accordance with state ethics laws: “[d]oes any board member have any known conflict of interest with respect to this matter coming before the Board today? If so, please identify the conflict or appearance of conflict and refrain from any undue or inappropriate participation in the particular matter involved.” No Board members, other than Mr. Lockhart and Mr. Herndon, stated that they had a conflict of interest or the appearance of a conflict of interest.

PETITIONER'S LIST OF EXHIBITS

1. Notice of Hearing
2. Licensure Database profile for Whitfield & Whitley Funeral Home
3. Preneed Examination Report, dated February 21, 2018
4. Detailed Preneed Examination Report, dated March 1, 2018
5. Email correspondence from Inspector Stoessner dated March 19, 2018

FINDINGS OF FACT

1. Whitfield & Whitley Funeral Home, located in Washington, North Carolina, (hereinafter "Respondent Funeral Home") is licensed as Funeral Establishment No. 622 and Preneed Funeral Establishment No. 417 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. Essie Mae McCarter (hereinafter "Respondent McCarter" or, collectively with Respondent Funeral Home, "Respondents") is licensed as Funeral Director No. 2227 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 McCarter holds a preneed sales license on behalf of Respondent Funeral Home.
3. Respondent McCarter is the licensed manager of Respondent Funeral Home.
4. On or about February 21, 2018, Inspector Christopher Stoessner and Inspector Brett Lisenbee conducted a preneed examination for Respondent Funeral Home (the "2018 Preneed Examination"). During the 2018 Preneed Examination, Inspector Stoessner noted violations of the Board's statutes and rules regarding the following preneed contracts:
 - a. Statements were not made available when requested from all insurance companies from policies sold by and not sold by the licensee, in violation of NC Gen. Stat. § 90-210.68 (a) and 21 NCAC 34D. 0301 (c)(5). Specifically, when a request was made for the most recent statement from Columbian, Assurant and Investors Heritage, Respondents were unable to produce it.
 - b. The following individuals were listed on the statement from Global Atlantic Financial Group but Respondents had failed to file contracts with the Board on their behalf and

could not locate their files upon request, in violation of NC Gen. Stat. § 90-210.68 (a) and 21 NCAC 34D. 0301 (c)(5):

- i. [REDACTED]
- ii. [REDACTED] and
- iii. [REDACTED]

c. The following active preneed contract files were not available for review and could not be located during the 2018 Preneed Examination:

- i. [REDACTED]
- ii. [REDACTED] and
- iii. [REDACTED]

d. The following closed preneed contract files were not available for review and could not be located during the 2018 Preneed Examination:

- i. [REDACTED] and
- ii. [REDACTED]

e. The following preneed contracts had not been timely filed with the Board:

- i. [REDACTED] and
- ii. [REDACTED]

5. Following the 2018 Examination, Inspector Stoessner instructed Respondents to provide him with documentation related to the files that could not be located during the 2018 Examination by a certain deadline. Respondents failed to do so.
6. To date, Respondents have failed to submit their 2017 Preneed Annual Report to the Board, which was required to be filed with the Board on or before March 31, 2018.

CONCLUSIONS OF LAW

1. Respondents are 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. Respondents are subject to jurisdiction before the Board.
3. The Board is authorized under Article 3A, Chapter 150B of the North Carolina General Statutes to hear this matter.

4. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, 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.
5. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating preneed provisions of the Board's laws and rules.
6. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(5), which requires every preneed licensee to keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies.
7. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (e), which requires every preneed licensee to keep a copy of the preneed contract in each active preneed contract file.
8. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (e), which requires every preneed licensee to keep a copy of each preneed contract, together with a copy of the certificate of performance, the preneed statement of funeral goods and services and the at-need statement of funeral goods and services, for each closed preneed contract file.
9. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. §§ 90-210.68(a) and 90-210.67(d), which requires every preneed licensee to file with the Board every preneed contract sold within ten (10) days of the sale, along with the requisite filing fee.
10. The acts and omissions of Respondents, described in Paragraphs 1-6 of the Findings of Fact, violate N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(4), which requires every preneed licensee to maintain copies of bank statements and deposit slips from financial institutions in which trust funds are deposited, certificate of deposit records, including both principal and interest transactions and trust accountings.
11. 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 director's license of Respondent McCarter. If

the Board concludes that Respondent McCarter 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 McCarter on probation and to assess a civil penalty not to exceed \$5,000.00.

12. 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.
13. 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.
14. The Board concludes that Respondent McCarter does remain fit to practice. As such, the Board has the authority to place Respondent McCarter on probation and to assess a civil penalty not to exceed \$5,000.00.

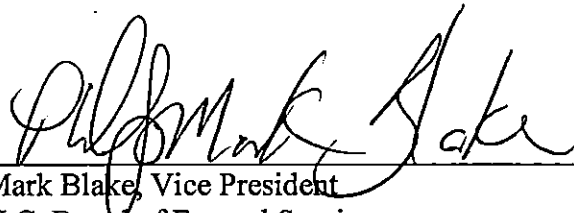
FINAL AGENCY DECISION

The Board of Funeral Service hereby issues the following decision:

1. The Funeral Service License of Essie Mae McCarter, FD 2227, shall be placed on probation for one (1) year, during which time she shall not violate any law, regulation, or rule regulated by the Board.
2. The Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home, Preneed Funeral Establishment No. 417, and its ancillary preneed sales licenses are suspended for a period of one (1) year, beginning on the dates on which this Final Agency Decision takes effect, on the following terms and conditions:
 - a. During the period of suspension, Respondent McCarter shall take a Board-sponsored continuing education course on preneed funeral service;
 - b. Respondent Funeral Home may request a re-inspection of its preneed records prior to the expiration of the period of suspension, upon payment of a \$100.00 re-inspection fee. If the Board inspector concludes that Respondent Funeral Home has brought its preneed records into substantial compliance with the Board's governing statutes and rules before the expiration of the period of suspension, Board staff shall have the discretion to lift the suspension of the Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home, and its ancillary preneed sales licenses, following the re-inspection and upon payment of the civil penalty assessed in Paragraph 3;

- c. Board staff shall conduct a preneed examination of Respondent Funeral Home no later than February 28, 2020. If the Board inspector concludes that Respondent Funeral Home has not brought its preneed records into substantial compliance with the Board's governing statutes and rules, the Preneed Funeral Establishment Permit of Whitfield & Whitley Funeral Home, and its ancillary preneed sales licenses, shall be automatically revoked without any further hearing before the Board.
3. If the Respondent Funeral Home maintains its license following the preneed examination in Paragraph 2 above, Respondent Funeral Home shall pay a civil penalty of One Thousand (\$1,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes prior to the period of suspension being lifted.
4. Within fifteen (15) days from the Effective Date of this Order, Respondent shall submit its 2017 Preneed Annual Report to the Board, along with the One Hundred Fifty Dollars (\$150.00) late fee.
5. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondent has thirty (30) days from the date that they receive this Final Agency Decision to file a Petition for Judicial Review. The Petition for Judicial Review must be filed in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. Since this is an administrative appeal, no additional evidence will be taken. If a Petition is filed, a Superior Court Judge will review the Final Agency Decision to determine whether there were any legal errors in the Final Agency Decision.
6. This Final Agency Decision shall take effect upon service of Respondent, in a manner consistent with N.C. Gen. Stat. § 150B-42(a).

By order of the North Carolina Board of Funeral Service, this, the 13th day of February, 2019.

By: 
Mark Blake, Vice President
N.C. Board of Funeral Service


CERTIFICATE OF SERVICE

I hereby certify that the foregoing Findings of Fact, Conclusions of Law, and Final Agency Decision was served upon the Respondent by United States Postal Service, Certified Mail, Return Receipt Requested, postage prepaid, addressed to:

Essie Mae McCarter, Manager
Whitfield & Whitley Funeral Home
312 W. Martin Luther King Drive
Washington, NC 27889

Essie Mae McCarter
PO Box 1665
Washington, NC 27889

This, the 14 day of February, 2019.



Catherine E. Lee
General Counsel