

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M21-0034

In the matter of:)
)
Blakely’s Funeral & Cremation Service, LLC,)
 Respondent.)
)

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 Respondent Funeral Home stipulate and agree to entry of the following Consent Order:

1. Blakely’s Funeral & Cremation Service, LLC (“Respondent Establishment”) is licensed as Funeral Establishment No. 0909 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). Said license was issued on or about April 26, 2017.
2. For all times relevant to this proceeding, Mary Lester Blakely (“Blakely”) was licensed as Funeral Director No. 3144 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). For all times relevant to this proceeding, Blakely did not hold a preneed sales license issued by the Board.
3. Between April 2017 and March 2021, Blakely served as the licensed manager of Respondent Establishment. According to Respondent Establishment’s 2021 Renewal Application, Blakely and Marvin Chambers (who is not licensed by the Board) co-owned Respondent Establishment.
4. On or about March 27, 2021 Blakely died.
5. On or about April 16, 2021, Board staff received correspondence from Mr. Henry Lee Chandler, who began serving as the licensed manager of Respondent Establishment on or about April 5, 2021. Mr. Chandler reported to the Board information tending to show that Blakely, on behalf of Respondent Establishment, has entered into a preneed contract on behalf of a consumer in January 2021.

6. On April 22, 2021, Board Inspector Darrell Cagle and Debbie Hamm conducted an investigation at Respondent Establishment's facility in Monroe, North Carolina. While onsite, the Board Inspectors found documents tending to show that Blakely, on behalf of Respondent Establishment, had engaged in unlicensed preneed contract sales between 2017 and March 2021, including but not limited to:

a. For preneed consumer [REDACTED]:

- i. On or about January 29, 2021, Blakely, on behalf of Respondent Establishment, entered into an inflation-proof insurance preneed funeral contract on behalf of Ms. [REDACTED];
- ii. On or about February 5, 2021, Monroe Rehabilitation Center, LLC remitted \$2,200 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract;
- iii. On or about March 4, 2021, Monroe Rehabilitation Center, LLC remitted \$30.00 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract;
- iv. On or about April 8, 2021, Monroe Rehabilitation Center, LLC remitted \$30.00 to Respondent Establishment as preneed payment toward Ms. [REDACTED] preneed contract;
- v. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
- vi. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.

b. For preneed consumer [REDACTED]:

- i. On or about November 30, 2020, Blakely, on behalf of Respondent Establishment, entered into an inflation-proof insurance preneed funeral contract on behalf of [REDACTED];
- ii. On or about November 30, 2020, Elizabethan Gardens Rest Home Inc. remitted \$700.00 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract, along with a \$20.00 check made payable to the Board for the preneed contract filing fee;
- iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
- iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.

c. For preneed consumer [REDACTED]

- i. On or about November 20, 2020, Blakely, on behalf of Respondent Establishment, entered into a preneed funeral contract on behalf of Mr. [REDACTED];
 - ii. On or about November 20, 2020, Accordius Health at Monroe, LLC remitted \$6,081.13 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract;
 - iii. On or about January 12, 2021, Accordius Health at Monroe, LLC remitted \$300.00 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract;
 - iv. Respondent Establishment deposited the preneed funds received on behalf of [REDACTED];
 - v. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
 - vi. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.
- d. For preneed consumer [REDACTED]:
- i. On or about June 9, 2020, Blakely, on behalf of Respondent Establishment, entered into an inflation-proof insurance preneed funeral contract on behalf of [REDACTED];
 - ii. On or about June 16, 2020, Elizabethan Gardens Rest Home Inc. remitted \$2,000.00 to Respondent Establishment as preneed payment toward [REDACTED] preneed contract;
 - iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
 - iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.
- e. For preneed consumer [REDACTED]:
- i. On or about July 15, 2020, Blakely, on behalf of Respondent Establishment, deposited into Respondent Establishment's operating account a check in the amount of \$8,528.50 as a preneed payment for funeral services on behalf of [REDACTED];
 - ii. Blakely, on behalf of Respondent Establishment, provided Ms. [REDACTED] with a signed preneed Statement of Funeral Goods and Services Selected, for a total cost of \$7,000;
 - iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt;
 - iv. Respondent Establishment failed to document the preneed contract with [REDACTED] on a form prescribed by the Board;

- v. Respondent Establishment failed to file a preneed contract with Ms. [REDACTED] with the Board.
- f. For preneed consumer [REDACTED]:
 - i. On or about June 10, 2019, Blakely, on behalf of Respondent Establishment, arranged for Respondent Establishment to become the owner of a life insurance policy for [REDACTED];
 - ii. On or about June 10, 2019, Blakely, on behalf of Respondent Establishment, prepared a draft inflation-proof trust preneed funeral contract in the amount of \$7,235.90 on behalf of [REDACTED];
 - iii. Respondent Establishment failed to finalize the preneed contract on a form prescribed by the Board; and
 - iv. Respondent Establishment failed to file a preneed contract with Ms. [REDACTED] with the Board.
- g. For preneed consumer [REDACTED]:
 - i. On or about December 13, 2017, Blakely, on behalf of Respondent Establishment, arranged for Respondent Establishment to become the beneficiary of a life insurance policy for [REDACTED];
 - ii. Respondent Establishment failed to complete the preneed contract for [REDACTED] on a form prescribed by the Board; and
 - iii. Respondent Establishment failed to file a preneed contract with Ms. [REDACTED] with the Board.
- h. For preneed consumer [REDACTED]:
 - i. Blakely, on behalf of Respondent Establishment, arranged for Respondent Establishment to become the beneficiary of a life insurance policy for [REDACTED]
 - ii. Respondent Establishment failed to complete the preneed contract for [REDACTED] on a form prescribed by the Board; and
 - iii. Respondent Establishment failed to file a preneed contract with Ms. [REDACTED] with the Board.
- i. For preneed consumer [REDACTED]
 - i. On or about March 26, 2020, Blakely, on behalf of Respondent Establishment, accepted a check in the amount of \$3,000.00 as a preneed payment for funeral services on behalf of Mr. [REDACTED];
 - ii. Blakely, on behalf of Respondent Establishment, drafted an inflation-proof insurance preneed funeral contract for [REDACTED] signature, for a total cost of \$3,000;

- iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
- iv. Respondent Establishment failed to file a preneed contract with Mr. [REDACTED] with the Board.

j. For preneed consumer [REDACTED]

- i. On or about January 20, 2021, Blakely, on behalf of Respondent Establishment, accepted a check in the amount of \$1,500.00 as a preneed payment for funeral services on behalf of Ms. [REDACTED]
- ii. Blakely, on behalf of Respondent Establishment, entered into an inflation-proof insurance preneed funeral contract with [REDACTED], for a total cost of \$1,500.00;
- iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
- iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.

k. For preneed consumer [REDACTED]

- i. On or about June 10, 2019, Blakely, on behalf of Respondent Establishment, accepted payment in the amount of \$3,000.00 as a preneed payment for funeral services on behalf of Ms. [REDACTED] F [REDACTED]
- ii. Blakely, on behalf of Respondent Establishment, entered into an inflation-proof trust preneed funeral contract on behalf of [REDACTED], for a total cost of \$3,000.00;
- iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
- iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.

l. For preneed consumer [REDACTED]:

- i. On or about February 7, 2020, Blakely, on behalf of Respondent Establishment, accepted payment in the amount of \$6,603.00 as a preneed payment for funeral services on behalf of Ms. [REDACTED];
- ii. Blakely, on behalf of Respondent Establishment, entered into an inflation-proof trust preneed funeral contract on behalf of [REDACTED], for a total cost of \$8,452.02;

- iii. Respondent Establishment failed to deposit the funds set forth above into a preneed trust account or insurance policy within five (5) days of receipt; and
 - iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.
- m. For preneed consumer [REDACTED]
- i. On or about March 14, 2016, Blakely, on behalf of Respondent Establishment, entered into an inflation-proof insurance preneed funeral contract on behalf of [REDACTED], for a total cost of \$8,828.75; and
 - ii. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.
- n. For preneed consumer [REDACTED]:
- i. On or about November 30, 2017, Blakely, on behalf of Respondent Establishment, entered into a preneed contract on behalf of Mr. [REDACTED] [REDACTED] for a total cost of \$11,693.50;
 - ii. On or about November 30, 2017, Blakely, on behalf of Respondent Establishment, accepted payment in the amount of \$1,693.50 as a preneed payment for funeral services on behalf of [REDACTED] [REDACTED] into a preneed trust account or insurance policy within five (5) days of receipt; and
 - iv. Respondent Establishment failed to file [REDACTED] preneed contract with the Board.
- o. A review of preneed receipts obtained from Respondent Establishment show the following preneed payments were received by Respondent Establishment:

[REDACTED]

xiv.



CONCLUSIONS OF LAW

1. Respondent 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. Respondent is 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 Respondent described in Paragraphs 1-6 constitute fraud or misrepresentation in the operation of a licensee's business, in violation of N.C. Gen. Stat. § 90-210.25(e)(1)b.
5. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to retain the complete physical files for preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b), (c).
6. The acts and omissions of Respondent described in Paragraphs 1-6 constitute the practice of preneed funeral service without holding a preneed establishment permit, in violation of N.C. Gen. Stat. § 90-210.67(a).
7. The acts and omissions of Respondent described in Paragraphs 1-6 constitute offering to engage or engaging in activities for which a preneed license is required but without having obtained such a license, in violation of N.C. Gen. Stat. § 90-210.69(c)(1).
8. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to timely file multiple preneed contracts with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d), and 21 NCAC 34D .0105.
9. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to post all preneed payments in the preneed cash receipt book, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(2);

10. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to post all preneed payments in the preneed cash receipt book, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D. 0301(c)(2);
11. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to deposit preneed funds paid toward a preneed contract into a trust account with a financial institution or an insurance policy within five (5) business days from the date of receipt, in violation of N.C. Gen. Stat. § 90-210.61(a)(1);
12. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to file with the Board the preneed contracts, which are supposed to be filed within ten (10) from the date that the contract was executed, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NCAC 34D .0105;
13. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to either execute or retain multiple applications for insurance, insurance policies, beneficiary designation documents, or instruments of assignment for insurance funded preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(5).
14. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to retain an at-need SGSS and completed certificate of performance for matured or cancelled preneed contract files, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b) and (e).
15. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to retain the physical files for multiple preneed contracts performed, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b), (c)(4), (c)(5), and (e).
16. The acts and omissions of Respondent described in Paragraphs 1-6 constitute a failure to accurately complete a 2017, 2018, 2019 and 2020 preneed annual report, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0302.
17. One or more of the violations described above were committed by any officer, director, manager, partner, operator, or member of Respondent Establishment. 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/or 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, Respondent wishes 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 Respondent acknowledges that it has read this entire document and understands it;

Whereas Respondent acknowledges that it enters into this Consent Order freely and voluntarily;

Whereas Respondent acknowledges that it has had full and adequate opportunity to confer with legal counsel in connection with this matter;

Whereas Respondent understands that this Consent Order must be presented to the Board for approval and that Respondent hereby waives 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 Respondent, it is ORDERED that:

1. The Order of Summary Suspension entered against Respondent Establishment is hereby lifted.
2. The at-need establishment permit of Respondent Establishment is hereby revoked, except that said revocation is stayed upon the following terms and conditions:
 - a. The at-need establishment permit shall remain on a probationary period for three (3) years from the effective date of this Consent Order;
 - b. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall pay a compromise penalty of Five Thousand Dollars (\$5,000.00) to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes;
 - c. Within thirty (30) days from the date this Consent Order takes effect, Respondent Establishment shall submit a complete and accurate application to the Board for a preneed establishment permit;
 - d. Within ninety (90) days from the date this Consent Order takes effect, Respondent Establishment shall provide evidence to the Board that it has retained the services of a consultant with preneed contract experience to assist it with complying with the terms and conditions of this Consent Order, providing the Board with the name and contact information of said consultant;

- e. Within ninety (90) days from the date this Consent Order takes effect, Respondent Establishment shall provide evidence to the Board that it has notified all consumers holding insurance policies for which Respondent Establishment is either the beneficiary or owner that the consumers must execute preneed contracts;
- f. Within ninety (90) days from the date this Consent Order takes effect, Respondent Establishment shall provide evidence to the Board that it has notified all preneed contract purchasers for which the beneficiaries still are living that the purchasers must execute preneed contracts on behalf of the beneficiaries;
- g. Within one hundred twenty (120) days from the date this Consent Order takes effect, Respondent Establishment shall execute preneed contracts with all consumers holding insurance policies for which Respondent Establishment is the beneficiary or owner. Respondent Establishment shall provide proof to the Board that it has exercised its best efforts to comply with this provision. Respondent Establishment shall file all such executed preneed contracts with the Board, along with the \$20 filing fee and \$25 late fee for each such contract;
- h. Within one hundred twenty (120) days from the date this Consent Order takes effect, Respondent Establishment shall execute preneed contracts on behalf of all living beneficiaries for whom it has received preneed payments since 2017. Respondent Establishment shall provide evidence to the Board that all preneed payments received since 2017 on behalf of living beneficiaries either have been deposited into trust or have been used to purchase a funding insurance policy for which Respondent Establishment is the beneficiary, in accordance with the purchaser's preference. Respondent Establishment shall provide proof to the Board that it has exercised its best efforts to comply with this provision. Respondent Establishment shall file all such executed preneed contracts with the Board, along with the \$20 filing fee and \$25 late fee for each such contract;
- i. Respondent Establishment shall obtain a surety bond in an amount not less than Fifty Thousand Dollars (\$50,000.00) and shall maintain said bond for at least five (5) years following the date this Consent Order is executed. Respondent Establishment shall provide proof to Board staff that it has obtained said surety bond within thirty (30) days of the date this Consent Order was executed. The surety bond obtained shall in all ways comply with 21 NCAC 34D .0203, in addition to any and all other applicable laws and rules;

- j. Respondent Establishment shall notify the Board within fifteen (15) days of becoming aware of any preneed contracts sold by Blakely on behalf of Respondent Establishment that are not identified herein, providing to the Board the names of the purchaser, beneficiary, and all records documenting said contracts;
 - k. All employees and owners of Respondent Establishment shall take a Board-sponsored continuing education course on or before June 30, 2021;
 - l. Other than as set forth in this Consent Order, any applications for establishment permits or preneed establishment permits submitted from entities of which Mr. Marvin Chambers is an owner, member-manager, partner, shareholder, or stockholder (in whole or in part) shall be denied until the terms of this Consent Order are satisfied;
 - m. Respondent Establishment shall submit to and pass without substantial deficiency an at-need inspection and preneed examination conducted by a Board Staff Inspector, which should be conducted on or before May 31, 2026;
 - n. During the period of probation, Respondent Establishment shall comply with all statutory and regulatory provisions governing the practice of funeral service.
2. If Respondent Establishment fails to comply with any of the provisions set forth above, the stay of revocation on the establishment permit of Respondent Establishment shall be immediately lifted;
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 any Respondent has 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 the Board and Respondents 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.

CONSENTED TO:

Blakely's Funeral & Cremation Service, LLC

By: Marvin Chambers Date: 5-2-21
Marvin Chambers
Member-Manager

By Order of the North Carolina Board of Funeral Service, this the 13 day of May
2021.

By: Don D. Brown
Don D. Brown
Board President