

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. M21-0079

In the matter of:

Mildred Randolph, Inc. d/b/a  
Leon Randolph Funeral Home and  
Mildred Keyes Randolph,  
Respondents.

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**CONSENT ORDER**

In accordance with North Carolina General Statutes Section 150B-38 and Title 21, Chapter 34 of the North Carolina Administrative Code, you are hereby notified that the North Carolina Board of Funeral Service (hereinafter the "Board") has received information tending to show that:

**FINDINGS OF FACT**

1. Respondent Mildred Randolph, Inc. d/b/a (hereinafter "Respondent Funeral Home"), is licensed by the Board as Funeral Establishment Permit No. 0432 and Preneed Establishment Permit No. 0478 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
2. Respondent Mildred Keyes Randolph (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Director No. 3068 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code.
3. For all times relevant to this Notice of Hearing, Respondent Individual has been the licensed manager and majority shareholder of Respondent Funeral Home.

**2019 Preneed Examination**

4. On or about March 28, 2019, Board Inspector Christopher Stoessner ("Inspector Stoessner") conducted an examination of trust and insurance-funded preneed contracts and records ("2018 Examination") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a) and found evidence tending to suggest violations of statute and rules governing the practice of preneed funeral service, as follows:
  - a. Respondents failed to maintain preneed contract files for approximately 29 consumers for whom Respondents became trustee pursuant to N.C. Gen. Stat. § 90-210.68(e). After said contracts had been transferred to Respondents from a predecessor establishment, Respondents mailed the original preneed contract files

to the 29 consumers and did not retain copies of any documents required for the preneed contract files, thereby failing to comply with its record-keeping obligations as trustee pursuant to N.C. Gen. Stat. § 90-210.68(a).

5. Following the 2018 Examination, Board Staff provided copies of all 29 preneed contracts on file with the Board to Respondents. Inspector Stoessner gave Respondents compliance directives to obtain funding documentation in support of the 29 preneed contracts.

#### 2021 Preneed Examination

6. On or about June 14, 2021, Inspector Stoessner conducted another examination of trust and insurance-funded preneed contracts and records ("2021 Examination") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a).
7. During the 2021 Examination, Inspector Stoessner again found evidence tending to show that Respondents had violated the statutes and rules governing the practice of preneed funeral service, as follows:
  - a. Respondents had accepted preneed payments from consumers [REDACTED] and [REDACTED] without first executing preneed contracts with said consumers on forms prescribed by the Board, in violation of N.C. Gen. Stat. § 90-210.62(b).
  - b. Respondents failed to file preneed funeral contract file for [REDACTED] and [REDACTED] with the Board, in violation of N.C. Gen. Stat. § 90-210.67(d).
  - c. Upon information and belief, Respondents failed to deposit preneed payments received from consumers [REDACTED] into a trust account or a prearrangement insurance policy, in violation of N.C. Gen. Stat. § 90-210.61(a)(1) and (3).
  - d. In July 2019, Respondents became trustee of certain preneed contracts, following the closure of a neighboring preneed establishment, in accordance with N.C. Gen. Stat. § 90-210.68(e). Thereafter, Respondents failed to notify the consumers that Respondents had assumed responsibility of their preneed contracts.
  - e. In completing the 2019 and 2020 Preneed Annual Reports, as required by N.C. Gen. Stat. § 90-210.68(a1), Respondents failed to provide year-end balances or updates on the contract status for approximately 50 contracts for which Respondents had assumed responsibility as trustee pursuant to N.C. Gen. Stat. § 90-210.68(e).
  - f. Respondents failed to timely file a preneed contract for [REDACTED] with the Board within ten (10) days of sale, in violation of N.C. Gen. Stat. § 90-210.67(d).

- g. Respondents failed to accurately and completely execute a preneed contract for multiple consumers, in violation of N.C. Gen. Stat. § 90-210.62(b) and the FTC Rule, as follows:
- i. [REDACTED] in that Respondents failed to obtain the purchaser's signature on the contract and set forth costs for goods and services that were inconsistent with the Respondents' General Price List;
  - ii. [REDACTED] in that Respondents failed to obtain the purchaser's signature or the date of sale on the contract;
  - iii. [REDACTED] in that Respondents failed to obtain the date of sale on the contract; and
  - iv. [REDACTED] in that Respondents failed to obtain the purchaser's signature or the date of sale on the contract;
8. Respondents failed to retain an at-need Statement of Funeral Goods and Services Selected for the closed preneed contract files of [REDACTED] in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b).
9. Respondents failed to refund excess preneed payments to the estate of, or the beneficiary of the estate of, [REDACTED] in violation of N.C. Gen. Stat. § 90-210.64. Furthermore, Respondents misrepresented the preneed payments received for the funeral services of [REDACTED] on the at-need Statement of Funeral Goods and Services Selected and on the Certificate of Performance filed with the Board, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(b).
10. Respondents failed to timely file with the Board the certificates of performance for [REDACTED] within ten (10) days of payment, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 NCAC 34D .0303(b).

### **CONCLUSIONS OF LAW**

11. Respondents are subject to jurisdiction before the Board.
12. The acts and omissions of Respondent Individual, described in Paragraphs 1-10, violate N.C. Gen. Stat. §§ 90-210.25(e)(1)(b) and 90-210.69(c)(4), for engaging in fraud or misrepresentation in the practice of funeral service or operation of a licensee's business.
13. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to properly maintain accurate and complete preneed records and forms, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 N.C. Admin. Code 34D .0301(a), (b), (c)(4), and (c)(5).

14. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to deposit preneed funeral funds into a trust account or insurance policy within five (5) business days from the date of receipt, in violation of N.C. Gen. Stat. § 90-210.61(a).
15. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to retain financial statements from the financial institution that houses the preneed funds for all trust-funded preneed contracts, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(4).
16. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to timely complete and/or file with the Board certificates of performance for performed preneed contracts, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 N.C. Admin. Code 34D .0303(b).
17. The acts and omissions of Respondents described in Paragraphs 1-10 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.
18. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to retain the physical files for multiple preneed contracts sold, in violation of N.C. Gen. Stat. § 90-210.68(a), and 21 NCAC 34D .0301(b), (c)(4).
19. The acts and omissions of Respondents described in Paragraphs 1-10 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).
20. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to retain an at-need Statement of Funeral Goods and Services Selected 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).
21. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to accurately complete their 2019 and 2020 preneed annual reports, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0302.

22. The acts and omissions of Respondents described in Paragraphs 1-10 constitute a failure to provide a date or purchaser's signature on a preneed contract, in violation of N.C. Gen. Stat. § 90-210.62(b) and 21 NCAC 34D .0101.
23. The acts and omissions of Respondents described in Paragraphs 1-10 constitute fraud or misrepresentation in the operation of Respondents' business, in violation of N.C. Gen. Stat. §§ 90-210.25(e)(1)b. and 90-210.69(c)(4).
24. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.69(c)(6), which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.
25. The acts and omissions of Respondents described in Paragraphs 1-10 violate N.C. Gen. Stat. § 90-210.25(e)(1)j., which prohibits violating or cooperating with others to violate the laws, rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984), as amended from time to time.
26. 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.
27. Pursuant to N.C. Gen. Stat. §§ 90-210.69(c)(6), (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.
28. The Board concludes that Respondent Individual committed one or more of the violations described in Paragraphs 11-24 but remains fit to practice. Pursuant to N.C. Gen. Stat. § 90-210.25(e)(2), the Board has the authority to place Respondent Individual on probation and to assess a civil penalty not to exceed \$5,000.00.
29. The Board concludes that Respondent Individual committed one or more of the violations described in Paragraphs 11-24. Pursuant to N.C. Gen. Stat. § 90-210.69(c), the Board has the authority to revoke, suspend, or refuse to issue or renew the preneed sales license of Respondent Individual, or to place Respondent Individual 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 agrees 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 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 Respondents, it is ORDERED that:

1. The preneed establishment permit of Respondent Funeral Home is hereby revoked, except that said revocation is stayed upon the following terms and conditions:
  - a. The preneed establishment permit and all ancillary preneed sales licenses of Respondent Funeral Home shall be actively suspended until such time as Respondent Funeral Home submits to and passes without substantial deficiency a preneed examination and audit conducted by a Board Staff Inspector. If the Board Staff Inspector finds evidence during said preneed examination and audit that consumer funds have been misappropriated or not properly refunded in accordance with the Board's governing statutes and rules, the stay of the revocation shall be automatically lifted until such time that a Show Cause Hearing can be held.
  - b. Following the period of active suspension Respondent Funeral Home shall remain in a probationary period for at least a period of three (3) years from the date of this Consent Order, and until such time as Respondent Funeral Home submits to and passes without substantial deficiency a preneed examination and audit conducted by a Board Staff Inspector, which examination should be conducted on or before October 2024. During the period of probation, Respondent Funeral Home shall comply with all statutory and regulatory provisions governing the practice of funeral service.

- c. Within ten (10) days following the date that this Consent Order takes effect, Respondents shall establish at a financial institution trust accounts in the name of Leon Randolph Funeral Home as Trustee for both [REDACTED] for all preneed payments previously remitted to Respondents until such time as Respondent Funeral Home executes legally-compliant preneed trust-funded contract for both [REDACTED] and transfers the funds to their respective preneed trust accounts or a preneed insurance policy, as directed by the consumers. Respondent Funeral Home shall provide the Board with the account number and name of the financial institution at which said trust accounts for both [REDACTED] is held. Upon execution, Respondent Funeral Home shall immediately file with the Board the legally compliant preneed contracts for both [REDACTED]
- d. Within ten (10) days following the date that this Consent Order takes effect, Respondents shall send proof to the Board that it has sent correspondence to all preneed contract purchasers for whom contracts had been transferred to Respondents from the former Whitfield & Whitley Funeral Home in July 2019. In said correspondence, Respondent shall notify the preneed contract purchasers of the following:
  - i. The preneed contract at issue is now located at the Respondent Funeral Home;
  - ii. Respondent Funeral Home agrees to honor the preneed contracts as executed by the former Whitfield & Whitley Funeral Home;
  - iii. Each preneed contract purchasers must either execute a new preneed contract with Respondent Funeral Home or execute a new preneed contract with a preneed establishment of the purchaser's choosing; and
  - iv. Respondent Funeral Home will cooperate and assist with transferring any preneed contract to another preneed establishment, should the preneed contract purchaser so choose.
- e. Within ten (10) days following the date that this Consent Order takes effect, Respondents shall send proof to the Board that it has refunded excess preneed payments to the estate of, or the beneficiary of the estate of, [REDACTED] in the amount of One Hundred Fifty-One and 64/Dollars (\$151.64).
- f. Within thirty (30) days from the date that this Consent Order takes effect, Respondent shall file with the Board an amended 2020 Preneed Annual Report that fully and accurately provides year-end balances and updates on the contract status for all preneed contracts for which Respondents serve as trustee.
- g. Within thirty (30) days from the date that this Consent Order takes effect, Respondents shall file with the Board a legally compliant amended preneed contract

for [REDACTED]

[REDACTED] in accordance with Inspector Stoessner's 2021 Preneed Examination.

- h. Within thirty (30) days from the date this Consent Order takes effect, Respondent Funeral Home shall pay a compromise penalty of Three Thousand (\$3,000.00) Dollars to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
  - i. All employees of Respondent Funeral Home shall take a Board-sponsored course on preneed statutes and rules on or before December 31, 2021.
2. 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 Respondent has violated any term of this Consent Order, 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.
3. This Consent Order shall take effect immediately upon its execution by all parties and reflects the entire agreement between Respondent and the Board, there being no agreement of any kind, verbal or otherwise, which varies, alters, or modifies this Consent Order.
4. 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.
5. Both the Board and counsel for Respondent 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.
6. Respondent hereby waives any requirement under any law or rule that this Consent Order be served upon them.
7. Upon its execution by the Board and Respondent, 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:

By: Mildred Keyes Randolph  
Mildred Keyes Randolph  
Sole Proprietor, Mildred Randolph, Inc.  
d/b/a Leon Randolph Funeral Home

Date: 09/29/2021

By: Mildred Keyes Randolph  
Mildred Keyes Randolph

Date: 09/29/2021

By Order of the North Carolina Board of Funeral Service, this the 19 day of  
Oct, 2021.

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

