

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA
BOARD OF FUNERAL SERVICE
CASE NO. M21-0105

In the matter of:)
)
Mercedes' Funeral Mansion and Cremation)
Services, LLC and Mercedes Fornay,)
)
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 August 10, 2022. The record further reflects that Board members Stephen Herndon and Steven Lyons 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. Catherine E. Lee, General Counsel, appeared for Board staff. Charles McDarris appeared as administrative law counsel for the Board. Respondent appeared at the hearing *pro se*.

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. Herndon and Dr. Lyons, stated that they had a conflict of interest or the appearance of a conflict of interest.

PETITIONER'S LIST OF EXHIBITS

1. iGov Profile for Respondent Establishment
2. iGov Profile for Respondent Individual
3. Notice of Hearing to Show Cause and Proof of Service
4. Funeral Inspection Report (2021)
5. Addendum to Funeral Inspection Report (2021)
6. First Picture of Preparation Room
7. Second Picture of Preparation Room
8. Picture of Body Tags
9. Price Lists
10. Documentation of Delivery of Cremated Remains
11. Statement of Funeral Goods and Services Selected (J. Bell)

12. Funeral Inspection Report
13. General Price List (2018)

RESPONDENT'S LIST OF EXHIBITS

None

FINDINGS OF FACT

1. Mercedes' Funeral Mansion and Cremation Services, LLC (hereinafter "Respondent Funeral Home"), is licensed by the Board as a Funeral Establishment Permit No. 0661 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. Mercedes Fornay (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Director No. 3926 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. Respondent Individual is the sole member of Respondent Funeral Home and has served as its licensed manager for all times relevant to this Notice of Hearing.
4. On or about October 26, 2021, Board Inspector Christopher J. Stoessner ("Inspector Stoessner") conducted a funeral establishment inspection ("2021 Inspection") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. §§ 90-210.23(e) and 90-210.24(b)(1).
5. During the 2021 Inspection, Inspector Stoessner found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral services, including the following:
 - a. Respondent's preparation room was in a state of disarray, with items not related to embalming stored therein, including a suitcase, a mirror, and other supplies, in violation of 21 NCAC 34B .0702;
 - b. Respondent could not locate or make available non-corrosive body ID tags, in violation of N.C. Gen. Stat. § 90-210.29A and 21 NCAC 34B .0616;
 - c. Respondent overcharged the family of decedent Jerome Bell in the amount of \$840.00, by charging for non-cash advance funeral goods and services in excess of the amounts set forth in Respondents' General Price List;

- d. Respondents failed to list an accurate price of each outer burial container not requiring special order on their Outer Burial Container Price List, in violation of 16 C.F.R. § 453.2(b)(3)(i). Respondents previously were cited during an inspection of Respondent Funeral Home in June 2018 for this same violation.
- e. Respondents failed to use or maintain a receipt to document the delivery of cremated remains from a funeral provider (BFS Form 56D1), in violation of 21 NCAC 34C .0303(c). Respondents previously were cited during an inspection of Respondent Funeral Home in June 2018 for this same violation.

CONCLUSIONS OF LAW

1. The acts and omissions of Respondents described in Paragraphs 1-5 constitute storage of items not related to embalming, dressing, or casketing within their preparation room, in violation of 21 NCAC 34B .0702.
2. The acts and omissions of Respondents described in Paragraphs 1-5 constitute a failure to locate or make available body ID tags, in violation of N.C. Gen. Stat. § 90-210.29A and 21 NCAC 34B .0616.
3. The acts and omissions of Respondents described in Paragraphs 1-5 constitutes a failure to list an accurate price of each outer burial container not requiring special order on their Outer Burial Container Price List, in violation of 16 C.F. R. § 453.2(b)(3)(i).
4. The acts and omissions of Respondents described in Paragraphs 1-5 constitute a failure to use or maintain a receipt to document the delivery of cremated remains from a funeral provider (BFS Form 56D1), in violation of 21 NCAC 34C .0303(c).
5. The acts and omissions of Respondents described in Paragraphs 1-5 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.

FINAL AGENCY DECISION

The North Carolina Board of Funeral Service hereby issues the following decision:

1. The Funeral Establishment Permit of Respondent Establishment and the Funeral Director License of Respondent Individual are hereby suspended for a period of one (1) year, provided that said suspensions shall be stayed on the following conditions:
 - a. Respondents shall be placed on probation during the period of stayed suspension;

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- b. Respondent Funeral Home shall submit, and pass without substantial deficiency, an at-need inspection conducted by a Board Staff Inspector within sixty (60) days following the effective date of this Final Agency Decision;
 - c. Respondent Individual shall take a Board-sponsored continuing education course on the FTC Rule and a Board-sponsored continuing education course on cremations on or before December 31, 2022; and
 - d. Within sixty (60) days, Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000.00) to the Civil Penalty and Forfeiture Fund in Accordance with Article 31A of Chapter 115C of the North Carolina General Statutes.
2. This Final Agency Decision shall take effect upon service of Respondent, in a manner consistent with N.C. Gen. Stat. § 150B-42(a).
 3. Pursuant to N.C. Gen. Stat. § 150B-45(a)(2), Respondent has thirty (30) days from the date that she receives 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.
 4. 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 29th day of August, 2022.

By:



Christian Watson, President
N.C. Board of Funeral Service