

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE NORTH CAROLINA  
BOARD OF FUNERAL SERVICE  
CASE NO. M22-0015

In the matter of: )  
)  
Dirk Malcolm Thompson d/b/a Dirk )  
M. Thompson Mortuary and Dirk )  
Malcolm Thompson, )  
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 September 15, 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. Sabra Faires 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. Notice of Hearing
2. Proof of Delivery of Notice of Hearing
3. Order for Continuance
4. iGov Profile for Respondent Establishment
5. iGov Profile for Respondent Individual
6. iGov Preneed Profile for [REDACTED]
7. Preneed Examination Report
8. Preneed Contract for [REDACTED]
9. Establishment Inspection Report
10. Price Lists
11. Statement of Funeral Goods and Services Selected for [REDACTED]
12. Statement of Funeral Goods and Services Selected for [REDACTED]

13. Statement of Funeral Goods and Services Selected for [REDACTED]
14. FTC's Complying with the Funeral Rule
15. Email from Respondent to Inspector Hamm dated April 7, 2022

#### RESPONDENT'S LIST OF EXHIBITS

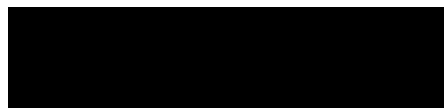
1. Excerpt from Price List from Unknown Funeral Establishment
2. Excerpt from Price List from Unknown Funeral Establishment

#### FINDINGS OF FACT

1. Respondent Dirk Malcolm Thompson d/b/a Dirk M. Thompson Mortuary (hereinafter "Respondent Funeral Home"), is licensed by the Board as a Funeral Establishment Permit No. 0663 and Preneed Establishment Permit No. 0734 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. Dirk Malcolm Thompson (hereinafter "Respondent Individual" or collectively with Respondent Funeral Home as "Respondents") is licensed by the Board as Funeral Service Licensee No. 890 and, therefore, is subject to Chapter 90 of the North Carolina General Statutes and Title 21, Chapter 34 of the North Carolina Administrative Code. Respondent Individual holds an ancillary preneed sales license on behalf of Respondent Funeral Home.
3. Respondent Individual is the sole proprietor of Respondent Funeral Home and served as its licensed manager for all times relevant to this Notice of Hearing.
4. On or about March 10, 2022, Board Inspector Debbie Hamm ("Inspector Hamm") conducted an examination of trust and insurance-funded preneed contracts and records ("2022 Examination") of Respondent Funeral Home, pursuant to N.C. Gen. Stat. § 90-210.68(a).
5. During the 2022 Examination, Inspector Hamm found evidence tending to show Respondents had violated statutes and rules governing the practice of preneed funeral service, including the following:
  - a. Respondents failed to make available Respondent Funeral Home's previous preneed establishment renewal, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(1);
  - b. Respondents failed to make available Respondent Funeral Home's previous preneed examination report, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(2);

- c. Respondents failed to maintain a current and accurate cash receipts journal or book, or equivalent thereto, showing all preneed payments collected, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(2);
  - d. Respondents failed to timely file with the Board within ten (10) days of sale preneed contracts for the following contracts, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NCAC 34D .0105:
    - i. [REDACTED]; and
    - ii. [REDACTED]
  - e. Respondents failed to file a certificate of performance within ten (10) days of payment for the contract of [REDACTED], in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 NCAC 34D .0303(b).
6. On or about March 10, 2022, Inspector Hamm also conducted a funeral establishment inspection of Respondent Funeral Home (the “2022 Inspection”), pursuant to N.C. Gen. Stat. §§ 90-210.23(e) and 90-210.24(b)(1).
  7. During the 2022 Inspection, Inspector Hamm found evidence tending to show Respondents had violated statutes and rules governing the practice of funeral service, including the following:
    - a. Respondents failed to have in place a written agreement with another funeral establishment, crematory, or hydrolysis licensee, or other entity that grants Respondents access to a refrigeration unit that is compliant with the provisions of 21 NCAC 34B .0707(a) and (b), in violation of 21 NCAC 34B .0707(d);
    - b. Respondents failed to include the required disclosure pertaining to direct cremation, in violation of 16 C.F.R. § 453.3(b)(2);
    - c. Respondents failed to include an accurate price range for direct cremation charges on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(C);
    - d. Respondents failed to include an accurate price range for immediate burial charges, on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(D);
    - e. Respondents failed to include an accurate price range for caskets offered for sale on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A)(1);
    - f. Respondents failed to include an accurate price range for outer burial container price lists offered for sale on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(B)(1);

- g. Respondents failed to maintain a Casket Price List with the caption “Casket Price List,” in violation of 16 C.F.R. § 453.2(b)(2)(ii);
- h. Respondents failed to include on their Casket Price List the price of each casket offered for sale that does not require special ordering, in violation of 16 C.F.R. § 453.2(b)(2)(i). Specifically, the Casket Price List did not list an “unfinished pine box” and the price was not discernable due to two different prices that were listed for cremation and immediate burial. The Casket Price List did not list a “cloth covered casket” as listed under immediate burial;
- i. Respondents did not list on their Casket Price List an alternative container for cremation or the unfinished pine box, which were referenced on the General Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i);
- j. Respondents failed to maintain an Outer Burial Container Price List with the caption “Outer Burial Container Price List,” in violation of 16 C.F.R. § 453.2(b)(3)(ii);
- k. Respondents assessed purchasers for services on behalf of the following decedents for both “basic services” and for “direct cremations,” in violation of 16 C.F.R. §§ 453.2(a) and 453.2(b)(4)(iii)(C):



- 8. Many of the violations of the FTC Rule identified by Inspector Hamm in the 2022 Inspection previously had been cited by Board Inspector Darrell Cage during his September 2019 funeral establishment inspection of Respondent Funeral Home.

#### CONCLUSIONS OF LAW

- 1. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to make available Respondent Funeral Home’s previous preneed establishment renewal, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(1);
- 2. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to make available Respondent Funeral Home’s previous preneed examination report, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(a)(2);
- 3. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to maintain a current and accurate cash receipts journal or book, or equivalent thereto, showing all preneed payments collected, in violation of N.C. Gen. Stat. § 90-210.68(a) and 21 NCAC 34D .0301(c)(2);

4. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to timely file with the Board within ten (10) days of sale all preneed contracts, in violation of N.C. Gen. Stat. § 90-210.67(d) and 21 NCAC 34D .0105:
5. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to file all certificates of performance within ten (10) days of payment, in violation of N.C. Gen. Stat. § 90-210.64(a) and 21 NCAC 34D .0303(b).
6. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to have in place a written agreement with another funeral establishment, crematory, or hydrolysis licensee, or other entity that grants Respondents access to a refrigeration unit that is compliant with the provisions of 21 NCAC 34B .0707(a) and (b), in violation of 21 NCAC 34B .0707(d);
7. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include the required disclosure pertaining to direct cremation, in violation of 16 C.F.R. § 453.3(b)(2);
8. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include an accurate price range for direct cremation charges on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(C);
9. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include an accurate price range for immediate burial charges, on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(ii)(D);
10. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include an accurate price range for caskets offered for sale on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(A)(1);
11. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include an accurate price range for outer burial container price lists offered for sale on its General Price List, in violation of 16 C.F.R. § 453.2(b)(4)(iii)(B)(1);
12. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to maintain a Casket Price List with the caption “Casket Price List,” in violation of 16 C.F.R. § 453.2(b)(2)(ii);
13. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to include on their Casket Price List the price of each casket offered for sale that does not require special ordering, in violation of 16 C.F.R. § 453.2(b)(2)(i);
14. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to list on their Casket Price List an alternative container for cremation or the unfinished pine

box, which were referenced on the General Price List, in violation of 16 C.F.R. § 453.2(b)(2)(i);

15. The acts and omissions of Respondents described in Paragraphs 1-8 constitute a failure to maintain an Outer Burial Container Price List with the caption “Outer Burial Container Price List,” in violation of 16 C.F.R. § 453.2(b)(3)(ii);
16. The acts and omissions of Respondents described in Paragraphs 1-8 constitute charging purchasers for both “basic services” and “direct cremation,” in violation of 16 C.F.R. §§ 453.2(a) and 453.2(b)(4)(iii)(C).
17. The acts and omissions of Respondents described in Paragraphs 1-8 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.
18. The acts and omissions of Respondents described in Paragraphs 1-8 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. Respondent Establishment’s Funeral Establishment Permit and Preneed Establishment Permit, and Respondent Individual’s Funeral Service License and ancillary Preneed Sales License are hereby placed on probation for a period of one (1) year, provided that Respondents shall comply with the following conditions:
  - a. Respondent Funeral Home shall submit, and pass without substantial deficiency, an at-need inspection and preneed examination conducted by a Board Staff Inspector within ninety (90) days following the effective date of this Final Agency Decision;
  - b. Respondent Individual shall take a Board-sponsored continuing education course on the FTC Rule on or before December 31, 2022; and
  - c. Respondents shall submit to Board staff price lists that are compliant with the FTC Rule within fifteen (15) days following the effective date of this Final Agency Decision.
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 he 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 27<sup>th</sup> day of September, 2022.

By:



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