

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

<p>NC Board of Funeral Services Petitioner</p> <p>v.</p> <p>Mitchell's Funeral Home, Vivian Cummings and Corrine J Culbreth Respondents</p>	<p>14 BMS 05389</p>
<p>NC Board of Funeral Services Petitioner</p> <p>v.</p> <p>Mitchell's Funeral Home, Vivian Cummings and Corrine J Culbreth Respondents</p>	<p>14 BMS 07597</p>
<p>NC Board of Funeral Services Petitioner</p> <p>v.</p> <p>Mitchell's Funeral Home, Vivian Cummings and Corrine J Culbreth Respondents</p>	<p>14 BMS 08028</p>

**PROPOSAL FOR DECISION
SUMMARY JUDGMENT FOR PETITIONER**

Upon consideration of Petitioner's Motion for Summary Judgment, pursuant to N.C. Gen. Stat. § 1A-1, Rule 56, N.C. Gen. Stat. § 105A-1, and 26 NCAC 3 .0115, on the grounds that there is no genuine issue of material fact remaining in these consolidated cases, and the movant is entitled to judgment as a matter of law, without response from Respondents to such Motion, and

for good cause shown, the undersigned hereby **GRANTS** and **ISSUES** Summary Judgment for Petitioner.

ISSUES

1. Whether Petitioner has sufficient grounds to suspend summarily, and to revoke Respondents' preneed and funeral service licenses for violating Articles 13A or 13D of Chapter 90 of the North Carolina General Statutes, 21 NCAC 34 .0101 et seq. or standards set forth in Funeral Industry Practices, 16 CFR § 453?

2. Whether there are any genuine issues of material fact, and if Respondent is entitled to judgment as a matter of law in these consolidated contested cases?

DISCUSSION

On August 26, 2011, Respondents Cummings and Mitchell Funeral Home entered into a Consent Order with Petitioner for Respondents' violations of the Board's laws and rules in Board Case No. V10-078. In such Order, Petitioner required Respondents comply with certain conditions, or face disciplinary action. (See Petitioner's Memorandum Supporting Motion for Summary Judgment, p. 5) Based on consumer complaints, and results from Petitioner's investigations, Petitioner learned of alleged violations by Respondents. (Petitioner's Memorandum Supporting its Motion for Summary Judgment is incorporated by reference)

In accordance with North Carolina General Statute §§ 150B-3, 150B-38, 150B-40(e), 90-210.69(c), 90-210.25(e), and 21 NCAC 34 .0101 et seq., Petitioner Board filed petitions on July 18, 2014, September 30, 2014, and October 17, 2014, requesting designation of an Administrative Law Judge to conduct hearings in these contested cases, and to issue a Proposal for Decision to the Petitioner Board. On November 7, 2014, Chief Administrative Law Judge Julian Mann III consolidated these contested cases for hearing.

As demonstrated by the pleadings of this case, including Petitioner's Memorandum Supporting its Motion for Summary Judgment, affidavits by Peter Burke, and Michael Hunter, and depositions by Will Tyson, Mack Leggett, Linda DeNittis, Brandon Diggs, Henry Hill and James Adams, and other documents of record, Respondents blatantly disregarded the cited statutes and rules that they are compelled to follow when practicing funeral services and preneed funeral activities. Moreover, Respondents failed to supervise and manage Ms. Patterson and Ms. Mitchell, unlicensed individuals working for Respondent Mitchell Funeral Home, in violation of the obligations imposed upon them by statute. Based upon pleadings and all other documents in the record, there are no genuine issues of material fact remaining in these cases, and the movant is entitled to judgment as a matter of law.

PROPOSAL FOR DECISION

NOW, THEREFORE, based on the foregoing, and pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, N.C.G.S. § 1A-1, the Undersigned hereby proposes that Petitioner **AFFIRM** Petitioner's summary suspension of Respondents' preneed and funeral service licenses. Based on the foregoing, and pursuant to N.C. Gen. Stat. § 90-210.25(e) and 150B-34, the undersigned hereby proposes that Petitioner permanently revoke:

- (1) Respondent Mitchell's Funeral Establishment Permit No. 725 and Preneed Establishment Permit No. 861,
- (2) Respondent Cumming's Funeral Service License No. 3140, and Preneed Sale License on behalf of Respondent Mitchell Funeral Home, and
- (3) Respondent Culbreth's Funeral Service License No. 1314 and Preneed Sale License on behalf of Respondent Mitchell Funeral Home.

NOTICE AND ORDER

The North Carolina Board of Funeral Services will make the Final Decision in this case. That Board is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written documents to the Board.

The North Carolina Board of Funeral Services is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the Final Agency Decision on all parties, the parties' attorneys of record, and the Office of Administrative Hearings.

This 23rd day of February, 2015.

Melissa Owens Lassiter
Administrative Law Judge