

ORDER NO. 2011-050

Docket No. BE-10-438

IN THE MATTER OF:	§	BEFORE:
	§	
BELLWOOD MEMORIAL PARK, INC.	§	THE BANKING COMMISSIONER
DBA BELLWOOD MEMORIAL	§	OF TEXAS
PARK AND MAUSOLEUM,	§	
	§	
TEMPLE, TEXAS	§	
(CERTIFICATE OF AUTHORITY	§	
NO. 175)	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of Bellwood Memorial Park, Inc., Temple, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas for consideration and action.

1. Bellwood Memorial Park, Inc. dba Bellwood Memorial Park and Mausoleum (Respondent) is a corporation located in Temple, Texas, operating a perpetual care cemetery (PCC) under certificate number 175. Respondent's principle business address on file with the Texas Department of Banking (Department) is P.O. Box 547, Temple, Texas 76503; the physical address of Bellwood Memorial Park and Mausoleum is 8575 Airport Road, Temple, Texas 76504.
2. Respondent has been properly notified regarding its right to an administrative hearing under Texas Health & Safety Code Chapter 712.
3. The Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding. The Commissioner has the authority to issue this Agreed Order (Order) under Texas Government Code § 2001.056, and to assess administrative penalties pursuant to Texas Health & Safety Code § 712.0441.

4. The statutory and regulatory provisions at issue in the administrative hearing pending against Respondent include Texas Health & Safety Code §§ 712.008(a) and (b), 712.0441, and 712.0442, and 7 Texas Administrative Code (TAC) §§ 26.4(b) and 26.12(b).
5. Dan C. Harper is the President of Respondent, and is duly authorized to execute this Order on behalf of Respondent.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Texas Health & Safety Code Chapter 172, Subchapter C. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Texas Health & Safety Code Chapter 712 or other applicable law, or restricts the Department from using past examinations of Respondent to establish a pattern or practice of repeated violations of law in future proceedings.
7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent of this Order;
 - b. the right to present defenses to the allegations;
 - c. notice and hearing prior to imposition of an administrative penalty by the Commissioner under Texas Health & Safety Code § 712.0441(a) for violation of Chapter 712, a rule adopted under Chapter 712, or an order of the Commissioner issued under Chapter 712;
 - d. the filing of proposed findings of fact and conclusions of law;
 - e. the issuance of a proposal for decision by an administrative law judge;
 - f. the filing of exceptions and briefs with respect to such proposal for decision;

- g. any review of this Order by the Texas Finance Commission; and
 - h. judicial review of this Order as provided by Texas Government Code § 2001.171 et seq., and any other challenge to the validity of this Order.
8. Respondent sold a marker to FC¹ on June 5, 2008. At that time, FC approved the design and lettering for the marker, signed the necessary ordering documentation, and paid in full all money due for the marker. Respondent never ordered the marker. FC subsequently filed a complaint.
 9. By no later than October 8, 2010, Respondent had received a copy of FC's written complaint. Respondent did not respond to FC's complaint in writing until January 3, 2011, eighty-seven (87) days after the latest date Respondent could have received a written copy of FC's complaint.
 10. After action by the Department, Respondent ordered FC's marker on April 4, 2011, one thousand and thirty-three (1,033) days after taking FC's order and receiving FC's funds.
 11. Respondent violated 7 TAC § 26.4, regarding marker ordering requirements, because Respondent collected all money due for a marker, the customer approved the design and lettering for the marker and signed necessary ordering documentation, and yet Respondent had not ordered the marker within twenty-one (21) days as required by 7 TAC § 26.4(b).
 12. Respondent also violated 7 TAC § 26.12(b), regarding consumer complaints, because Respondent received a written complaint and did not respond in writing within the thirty (30) days required by 7 TAC § 12(b).
 13. Respondent agrees to pay an administrative penalty in the amount of \$6,000.00.

¹ The purchaser of the marker is referred to by initials to preserve privacy.

14. Respondent and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

ORDER

It is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. Respondent shall not engage in activities in violation of Texas Health & Safety Code Chapter 712.
2. Respondent shall fully comply with the time limits and all other requirements of 7 TAC §§ 26.4 and 26.12.
3. Respondent shall pay the administrative penalty amount of \$6000.00, to the Department in monthly installments of \$500.00, beginning June 10, 2011, with succeeding payments due on the 10th of each month. If Respondent pays according to the terms of this Agreed Order, its final payment will be due May 10, 2012.
4. Failure to make a monthly payment by the 15th of the month shall cause the due date of the unpaid balance to be accelerated and immediately due and payable. Failure to pay the accelerated balance within thirty (30) days after receiving notice of default and acceleration from the Department will result in the referral of this matter to the Office of the Attorney General for collection.
5. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondent that come to the attention of the Department.

