

**ORDER 2012-035**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE:</b>
	§	
<b>JEFFREY W. GENTRY</b>	§	<b>THE BANKING COMMISSIONER</b>
<b>dba</b>	§	<b>OF TEXAS</b>
<b>GENTRY FIFE FUNERAL HOME</b>	§	
	§	
<b>JUNCTION, TEXAS</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**AGREED ORDER**

On this day, the matter of Jeffrey Gentry dba Gentry Fife Funeral Home (Respondent) located in Junction, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas for consideration and action. This matter concerns: (1) the Emergency Order to Cease and Desist Activities and to Seize Prepaid Funeral Money and Records, Commissioner Order No. 2012-025; and (2) an agreement to pay an administrative penalty for a prepaid funeral contract that was not handled in accordance with the law.

1. Respondent and the Texas Department of Banking (Department) jointly request the Commissioner to dispose of this matter pursuant to the provisions of Government Code § 2001.056 by entering this Agreed Order. Respondent and the Department stipulate to the facts found by the Commissioner in Order No. 2012-025, and as restated here, and the parties agree to comply with the terms of this Agreed Order.
2. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Texas Finance Code Chapter 154 and Texas Government Code §§ 2001.171 et seq., and that the Commissioner has the authority to issue this Agreed Order under Texas Government Code § 2001.056.
3. Respondent operated a funeral home known as Gentry Fife Funeral Home, located at 1519 Main Street, Junction, Texas 76849. Respondent previously held permit number 485 to sell

trust-funded prepaid funeral contracts (PFCs) in Texas, pursuant to Texas Finance Code § 154.103. Respondent's permit expired on June 1, 2012, and therefore Respondent no longer holds the permit required to sell PFCs under Texas Finance Code § 154.101. Because outstanding PFCs remain in force, Respondent has violated Texas Finance Code § 154.107 by failing to renew the permit.

4. Under Commissioner's Order No. 2010-029, Respondent agreed to maintain permit number 485 for so long as outstanding PFCs were in force. Consequently, by allowing the permit to expire on June 1, 2012, Respondent has violated the terms of Order No. 2010-029.
5. On August 14, 2012, the Commissioner issued Order No. 2012-025, which required Respondent to cease and desist from engaging in the sale of PFCs, and ordered the seizure of his PFC records and funds. The Commissioner based Order No. 2012-025 on findings that: Respondent violated Texas Finance Code § 154.053 and 7 TAC § 25.11 by failing to provide records required for examination by the Department; Respondent violated Texas Finance Code § 154.161 by failing to properly prepare preneed-to-at-need reconciliations; and Respondent violated Texas Finance Code §§ 154.301(b) and 154.302 by failing to file abandoned property reports.
6. After the Commissioner issued Order No: 2012-025, the Department received a trust-funded PFC which Respondent had not previously reported, in violation of 7 TAC § 25.11, and which Respondent failed to surrender to the Department as required by Order No. 2012-025. Respondent also violated Texas Finance Code §§ 154.253 and 154.159 with respect to this PFC for failing to properly deposit funds into trust. Respondent has since refunded to the consumer the entire \$4,000.00 paid for this PFC.

7. On May 3, 2010, Respondent swore an affidavit which stated that funds had been misappropriated only with respect to eight specific PFCs. The PFC described in Paragraph 6 was not one of the eight specified in the May 3, 2010 affidavit. Consequently, the affidavit constitute a misrepresentation to the Department under oath.
8. Texas Finance Code § 154.406 authorizes the Commissioner to assess administrative penalties in this matter. The imposition of an administrative penalty against Respondent in the amount of \$7,000.00 is appropriate and reasonable given the nature of the violations cited above.
9. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas, or restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of law in future proceedings.
10. Respondent has been notified of his right to a hearing on the matter of administrative penalties under Texas Finance Code § 154.406.
11. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
  - a. The right to challenge, in any forum, Order No. 2012-025;
  - b. Service upon Respondent of this Agreed Order;
  - c. Notice and hearing prior to imposition of an administrative penalty;
  - d. Review of this Agreed Order by the Texas Finance Commission, and judicial review of this Agreed Order as provided by Texas Government Code §§ 2001.171 et seq., and any other challenge to the validity of this Order.

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

**ORDER**

**WHEREFORE**, based on the foregoing, the Commissioner **ORDERS** that this matter is resolved in accordance with the following terms:

13. Commissioner's Order No. 2012-025 is final and unappealable, provided however that to the extent there is any conflict between the terms and conditions of this Agreed Order and Order No. 2012-025, this Agreed Order shall supersede the terms and conditions of Order No. 2012-025, Respondent hereby withdraws his prior request for an administrative hearing on whether Order No. 2012-025 shall become final.
14. Respondent affirms that to Respondent's knowledge, no other PFCs exist which were not properly funded in accordance with Texas Finance Code Chapter 154. Respondent further affirms that Respondent has not violated Chapter 154 in any other way. Respondent also affirms that if any other PFCs are discovered which were either improperly funded or were not previously surrendered to the Department, Respondent must notify the Department within three business days of locating such PFC.
15. Respondent shall sell no future PFCs without first obtaining the required permit. Respondent shall not engage in any other activities that violate Texas Finance Code Chapter 154.
16. Respondent and the Department agree that an administrative penalty of \$7,000.00 is appropriate, given the violations described above. The administrative penalty of \$7,000.00 shall be payable to the Department as follows: \$2,000.00 on or before November 1, 2012, then \$1,000.00 per month, by the first day of each month, for five months beginning

December 1, 2012. Accordingly, the final payment of \$1,000.00 shall be due April 1, 2013.  
All payments shall be paid by money order or cashier check.

17. Failure to make a monthly payment by the 5th of the month constitutes a default of the payment terms of this Order, which shall cause the due date of all remaining payments to be accelerated and the entire unpaid balance of the administrative penalty shall become immediately due. Failure to pay the accelerated balance within thirty (30) days after receiving notice of the default and acceleration from the Department will result in referral of this matter to the Office of the Attorney General for collection,
18. This Order is effective on the date signed by the Commissioner.

Signed this 26th day of October, 2012.

/s/ Stephanie Newberg  
*for* Charles G. Cooper  
Texas Banking Commissioner

AGEED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Jeffrey W. Gentry  
Jeffrey W. Gentry

October 24, 2012  
Date

State of Colorado ( )  
County of Mesa ( )

Sworn to and subscribed before me on the 24th day of October, 2012, by Jeffrey W. Gentry.

Latasha Jo Harris  
Notary Public's signature

APPROVED AS TO FORM

/s/ Deborah Loomis  
Deborah Loomis  
Assistant General Counsel  
Texas Department of Banking

October 26, 2012  
Date

/s/ Steve Pickell  
Steve Pickell  
Attorney for Respondent  
620 Earl Garrett  
Kerrville, Texas 78028

October 25, 2012  
Date