

ORDER NO. 2009-065

IN THE MATTER OF:

**WALKER-MORA FUNERAL HOME, INC.
DBA WALKER-MORA FUNERAL HOME**

ALICE, TEXAS

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BEFORE THE BANKING

COMMISSIONER OF TEXAS

AUSTIN, TRAVIS COUNTY, TEXAS

**Order Cancelling Permit, To Cease and
Desist Activity, and To Seize Funds and Records**

On this day, the matter of Walker-Mora Funeral Home, Inc. dba Walker-Mora Funeral Home, Alice, Texas (“Respondent”), was submitted to the Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

I. Findings

1. Respondent holds prepaid funeral benefits permit number 546 issued by the Texas Department of Banking (“Department”) under Chapter 154, Texas Finance Code, to sell preneed funeral benefits contracts to the public.
2. The Department conducted a full scope examination of Respondent commencing on March 2, 2009, with analysis as of December 31, 2008. The report of examination (ROE) found that Respondent violated the following laws:
 - a. For the second consecutive examination, Respondent violated § 154.261(b), Texas Finance Code, by failing to make a \$1,327.49 deposit to the preneed trust fund to correct an interest shortage noted at the previous examination. The shortage resulted from an unauthorized withdrawal initiated by the Internal Revenue Service from the trust for payment of an outstanding tax obligation of Walker-Mora Funeral Home, Inc. Respondent has not adequately responded to the Department’s demand that it provide adequate documentation of the deposit and that management respond in writing to the Department about this violation.
 - b. Respondent violated § 25.23(b)(2), 7 Texas Administrative Code, by failing to timely pay its renewal fee by March 1, 2009. It subsequently paid it on March 26, 2009.

- c. Respondent violated § 154.052(a), Texas Finance Code, by failing to file an accurate 2008 Annual Report, due to the shortage referred to in the violation of § 154.261(b), above.
3. On April 24, 2009, the Department gave Respondent notice of these failures and demanded that Respondent correct them and submit documentation of the corrections to the Department by May 29, 2009. Respondent failed to timely do so.
 4. On May 15, 2009, the Department received a complaint on behalf of _____, made by _____ daughter. The complainant supplied evidence showing that _____ has fully paid off, in the amount of \$2,970.00, a prepaid funeral benefits contract _____ purchased from Respondent on March 21, 1995. However, Respondent's records show that only \$970.00 is in trust for _____ in Respondent's trust account. The complainant stated that _____ had been attempting to cancel this prepaid funeral contract since July 2008, and Respondent had refused to pay _____ the funds due.
 5. Respondent has violated § 154.155(b), Texas Finance Code, by failing to timely refund amounts due to _____ and § 154.253(a), Texas Finance Code, by failing to deposit into its trust account 90% of the amount collected from _____.
 6. The Department sent Respondent letters dated May 20, 2009, and June 24, 2009, demanding that it respond to the complaint. Respondent failed to do so.
 7. On September 20, 2009, after notice and an opportunity for hearing, the Commissioner issued a final order ordering Respondent to pay restitution in the amount of \$2,673.00 for _____, administrative penalties in the amount of \$8,000.00, and court costs. The order became non-appealable on October 20, 2009. Respondent has not complied with that order.

II. Conclusions

1. The Commissioner is authorized by § 154.109(a)(1), Texas Finance Code, to cancel a permit if the Commissioner finds by examination or other credible evidence that certain events have occurred, including a finding that the person has violated Chapter 154, Texas Finance Code, or other law of this state relating to the sale of prepaid funeral benefits, including a final order of the Commissioner or rule of the commission.
2. The Commissioner is authorized by § 154.408, Texas Finance Code, to issue a cease and desist order to a person if the Commissioner finds by examination or other credible evidence that the

person has violated a law of this state relating to the sale of prepaid funeral benefits, including a violation of this chapter or a final order of the Commissioner or rule of the commission.

3. The Commissioner finds by examination and other credible evidence that Respondent has violated §§ 154.052(a), 154.155(b), 154.253(a), and 154.261(b) Texas Finance Code; and § 25.23(b)(2), 7 Texas Administrative Code.
4. The Commissioner finds that these violations constitute sufficient cause for issuance of an order to cancel Respondent's permit under § 154.109(a)(1), Texas Finance Code, and to order Respondent to cease and desist from selling prepaid funeral benefits under § 154.108, Texas Finance Code.
5. The Commissioner is authorized by § 154.412, Texas Finance Code, to issue an order seizing prepaid funeral accounts and records of a person if the Commissioner finds by examination or other credible evidence that certain events have occurred, including that the person:
 - a. failed to deposit money in accordance with Subchapter F of Chapter 154, Texas Finance Code;
 - b. failed or refused to pay on demand money paid by beneficiaries for prepaid funeral benefits contracts; and
 - c. is subject to an order to cancel its permit.
6. The commissioner finds by credible evidence that Respondent has failed to deposit money in accordance with Subchapter F of Chapter 154, Texas Finance Code, by failing to deposit into its trust account 90% of the amount collected from _____.
7. The Commissioner finds by credible evidence that Respondent has refused to pay on demand money entrusted to it that belongs to _____ under a prepaid funeral benefits contract.
8. The Commissioner finds by credible evidence that Respondent is the subject of this order to cancel its permit.
9. The Commissioner finds that these violations constitute sufficient cause for issuance of an order to Respondent to seize its prepaid funeral accounts and records under § 154.412, Texas Finance Code.

III. Order

In accordance with § 154.109(a)(1), Texas Finance Code, it is ORDERED that Respondent's prepaid funeral contract permit No. 546 is cancelled.

In accordance with § 154.408, Texas Finance Code, Respondent is ORDERED to cease and desist from engaging in the sale of any prepaid funeral benefits.

In accordance with § 154.412, Texas Finance Code, it is hereby further ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of:

1. all funds located in account numbers _____ and _____ in Wells Fargo Bank, N.A., 601 E. Main Street, Alice, Texas 78332;
2. all prepaid funeral money collected by Respondent and all earnings thereon, wherever located, including funds at any other bank or other financial institution where prepaid funeral funds are held; and
3. the contracts and other records of Respondent that relate to the sale of prepaid funeral benefits, wherever they may be located, held or found, including the location of the Walker-Mora Funeral Home, Inc. dba Walker-Mora Funeral Home, in Alice, Texas.

IV. Effective Dates

Pursuant to §§ 154.110(a)(2), 154.408(d), and 154.412(c), Texas Finance Code, this Order Cancelling Permit, to Cease and Desist Activity, and to Seize Accounts and Records will take effect on December 23, 2009 (which is the 16th day after the date this Order was mailed to Respondent), unless on or before December 22, 2009, (which is the 15th day after the date this Order was mailed) Respondent requests a hearing pursuant to §§ 154.110(c), 154.408(d), and/or 154.412(d), Texas Finance Code.

V. Service

This Order is served on Mr. Arnoldo J. Ramirez, President, by first class mail, and certified mail, return receipt requested, sent on December 7, 2009, Walker-Mora Funeral Home, P.O. Box 1554, Alice, Texas 78333.

Signed on this 4th day of December, 2009.

/s/ Charles G. Cooper
Charles G. Cooper
Texas Banking Commissioner