

ORDER NO. 2009-066

IN THE MATTER OF:	§ BEFORE THE BANKING
THREADGILL ENTERPRISES, INC.	§
DBA RESTHAVEN MEMORIAL PARK,	§
CORSICANA, TEXAS	§
(CERTIFICATE OF AUTHORITY NO. 38)	§ COMMISSIONER OF TEXAS
AND	§
DBA RUSK COUNTY MEMORIAL GARDENS	§
HENDERSON, TEXAS	§
(CERTIFICATE OF AUTHORITY NO. 77)	§ AUSTIN, TRAVIS COUNTY, TEXAS

Agreed Order

On this day, came on for consideration by the Banking Commissioner of Texas (Commissioner) the matter of Threadgill Enterprises, Inc. dba Resthaven Memorial Park, Corsicana, Texas and dba Rusk County Memorial Gardens, Henderson, Texas (Respondents) concerning Texas Perpetual Care Cemeteries Permits No. 38 and No. 77.

Respondents and the Department of Banking (Department) have entered into an agreement and jointly request the Commissioner to dispose of this matter pursuant to Texas Government Code, § 2001.056. Respondents and the Department agree that the Commissioner may make the following Findings of Fact and Conclusions of Law and enter this Agreed Order (Order) and agree to the terms of the Order.

Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Texas Health and Safety Code, Chapter 711 and Texas Finance Code, Chapter 154.
2. Respondents acknowledge the right to notice of hearing, a public hearing, a proposal for decision, a review of this matter by the Commissioner, and judicial review of this matter as provided for in Texas Health and Safety Code, Chapter 711, Texas Finance Code, Chapter 154, and Texas Government Code, § 2001.171 et seq. Respondents have expressly waived those rights.
3. Respondents failed to timely and adequately respond to consumer complaints from _____ dated June 3, 2009, regarding the installation of a marker and vase, from _____ dated August 25, 2009, regarding a locked and inaccessible mausoleum, and from _____ dated _____

September 14, 2009, regarding the failure to place the death date on her _____ tombstone during the three years after ____ death.

4. Respondents provided documents regarding the acquisition of the two cemeteries – Rusk County Memorial Gardens and Resthaven Memorial Park – by Threadgill Enterprises, Inc. in February, 2009. The certificate of formation received by the Department indicates that Respondents are not properly organized as a corporation authorized to maintain and operate a perpetual care cemetery in Texas in compliance with the requirements of Texas Health and Safety Code, Chapter 711, § 711.021.
5. Respondents have failed to obtain a Prepaid Funeral Contract (PFC) permit from the Department. This permit is required in order to transfer and maintain prepaid funeral benefits contracts and the funds from prepaid funeral benefits contracts that are now the responsibility of Respondents.

Conclusions of Law

Based upon the foregoing Findings of Fact, the Commissioner makes the following Conclusions of Law:

1. The Commissioner has jurisdiction over this matter pursuant to Texas Health and Safety Code, Chapter 711 and Texas Finance Code, Chapter 154.
2. Respondents have knowingly and voluntarily waived the procedural requirements necessary to the entry of this Order, including the notice of hearing, a public hearing, a proposal for decision, further review of this Order by the Commissioner, and judicial review as provided for in Texas Health and Safety Code, Chapter 711, Texas Finance Code, Chapter 154, and Texas Government Code, § 2001.171 et seq.
3. The Commissioner has the authority to dispose of this matter as set forth herein under Texas Health and Safety Code, Chapter 711, Texas Finance Code, Chapter 154, and Texas Government Code, § 2001.056.
4. Based upon Finding of Fact No. 3, Respondents have failed to adequately respond to the consumer complaints of _____, _____, and _____ and this failure of Respondents to timely respond to these consumer complaints violates of the provisions of 7 Texas Administrative Code, §§ 26.12 and 26.4.

5. Based upon Finding of Fact No. 4, Respondents are not properly organized as a corporation authorized to maintain and operate a perpetual care cemetery in Texas in compliance with the requirements of Texas Health and Safety Code, Chapter 711, § 711.021.
6. Based upon Finding of Fact No. 5, Respondents have failed to apply for and obtain a PFC permit in order to transfer and maintain prepaid funeral benefits contracts and trust funds and this failure violates Texas Finance Code, Chapter 154, §§ 154.101 and 154.106.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner ORDERS that this matter is hereby resolved in accordance with the following terms:

1. Respondents are ORDERED to pay an administrative penalty in the amount of ten thousand dollars (\$10,000.00) for violations of Texas Health and Safety Code, Chapter 711 and Texas Finance Code, Chapter 154. The schedule for payment of the penalty shall be as follows: (a) two thousand five hundred dollars (\$2,500.00) upon the execution of this agreed order; (b) two thousand five hundred dollars (\$2,500.00) on or before December 30, 2009; and (c) the final payment of five thousand dollars (\$5,000.00) on or before February 15, 2010; provided, however, that the amount of said penalties will be reduced at the discretion of the Department if certain deadlines for specific compliance are met as further described in this ORDER.
2. Respondents are ORDERED to properly organize as a corporation authorized to maintain and operate a perpetual care cemetery in Texas in compliance with the requirements of Texas Health and Safety Code, Chapter 711, § 711.021. Respondents are ORDERED to confirm in writing to the Department that this action has been properly taken and approved by the Texas Secretary of State. If Respondents have filed with the Secretary of State the correct documents necessary to fully comply with this statutory provision on or before January 1, 2010, the administrative penalty due February 15, 2010, shall be reduced by two thousand five hundred dollars (\$2,500.00).
3. Respondents are ORDERED to adequately respond to the consumer complaints filed by _____ regarding the installation of a marker and vase, from _____ regarding a locked and inaccessible mausoleum, and from _____ regarding the failure to place the death date of her _____ tombstone during the three year period after ____ paid for this service. Respondents shall provide the Department with documentation showing that these consumer complaints have been resolved. If Respondents achieve compliance with the

provisions of 7 Texas Administrative Code, §§ 26.12 and 26.4 regarding the proper handling of these consumer complaints by December 15, 2009, to the satisfaction of the Department, the administrative penalty due December 30, 2009, shall be reduced by two thousand five hundred dollars (\$2,500.00).

4. Respondents are ORDERED to modify the contracts used for the sale of plots and markers after the effective date of the Order to specifically comply with the disclosure provisions of Texas Health and Safety Code, § 712.007(c), Title 7 Texas Administrative Code, § 26.11(b)(1), and Texas Occupations Code, § 651.4065.
5. Respondents are ORDERED to cease the sale of plots and markers until such time as: (a) a revised corporate charter has been filed and approved by the Texas Secretary of State; (b) the outstanding consumer complaints herein described have been properly handled to the satisfaction of the Department, and (c) the contracts used for the sale of plots and markets are modified to contain the disclosures required by statute.
6. Respondents are ORDERED to immediately file an application and obtain the approval by the Department for a Prepaid Funeral Contract permit in order to transfer, sell and maintain prepaid funeral benefits contracts and trust funds in compliance with the requirements of Texas Finance Code, Chapter 154. If Respondents are in compliance with Texas Finance Code, Chapter 154, §§ 154.101, 154.106, and 154.151 by February 1, 2010, to the satisfaction of the Department, the administrative penalty due February 15, 2010, shall be reduced by two thousand five hundred dollars (\$2,500.00).

The effective date of this Order is the date the Order is signed by the Commissioner.

Signed this 8th day of December, 2009.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

Threadgill Enterprises, Inc.
dba Resthaven Memorial Park, Corsicana, Texas and
dba Rusk County Memorial Gardens

/s/ Chris Threadgill
Chris Threadgill
Owner

Texas Department of Banking

/s/ Robert Giddings
Robert Giddings
Assistant General Counsel