

Order No. 2010-011

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
JEFFREY GENTRY DBA GENTRY FIFE FUNERAL HOME JUNCTION, TEXAS	§	
	§	COMMISSIONER OF TEXAS
	§	
AND	§	
	§	
GENTRY FUNERAL HOME MASON, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

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

On this day, the matter of Jeffrey Gentry dba Gentry Fife Funeral Home, Junction, Texas, and Gentry Funeral Home, Mason, 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 485 issued by the Texas Department of Banking (“Department”) under Chapter 154 of the Texas Finance Code, to sell prepaid funeral benefits contracts (“PFBCs”) to the public.
2. The Department conducted a full scope examination of Respondent commencing on June 17, 2009, with analysis as of May 31, 2009. During that examination, 21 trust-funded contracts were found, and the amount in trust was \$_____ at Junction National Bank, Junction, Texas.
3. On December 4, 2009, the Department received a complaint from Chief Deputy Arthur Leistikow, Kimble County Sheriff’s Department, concerning Respondent’s theft of thousands of dollars belonging to _____. According to the complaint, _____ paid Respondent for his wife’s funeral and burial marker, even though _____ had funds on deposit in a personal trust account at JP Morgan Chase Bank (“JP Morgan”) for his wife’s funeral expenses. _____ and Respondent agreed that JP Morgan would send the funds to Respondent, who would then forward them to _____. The complaint included evidence that JP Morgan forwarded \$8,660.00 to Respondent on September 29, 2008. Respondent wrote _____ several insufficient funds checks, and, as of one year after Respondent received \$8,660.00 from JP Morgan, Respondent had only refunded _____ \$3,000.00.

4. The complaint also included a copy of an indictment showing that Respondent was indicted on November 16, 2009, for felony theft in regard to the _____ matter.
5. In January, 2010, the Department became aware of a trust-funded PFBC that Respondent sold on August 20, 2008, for \$3,900.00. That contract was not among those produced at the examination on June 17, 2009. Nor was money for that contract deposited in the permit holder's restricted bank account.
6. The Commissioner finds that immediate or irreparable harm is threatened to the public or a beneficiary under a PFBC because Respondent has been writing insufficient funds checks on the funeral home account for over a year, Respondent is under indictment for felony theft in connection with his funeral business, Respondent has written at least one PFBC that was hidden from Department examiners and for which money was not properly trusted. Based on the Department's experience in past cases, when a person has written one contract without complying with the laws governing PFBCs, more illegal contracts come to light.

II. Conclusions

An emergency order to cancel permit and to cease and desist is warranted.

7. The Commissioner is authorized by Texas Finance Code § 154.109(a)(1) 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 of the Texas Finance Code, or other law of this state relating to the sale of PFBCs, including a final order of the Commissioner or rule of the commission.
8. The Commissioner is authorized by Texas Finance Code § 154.408 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 PFBCs, including a violation of this chapter or a final order of the Commissioner or rule of the commission.
9. The Commissioner finds by examination and other credible evidence that Respondent has violated Texas Finance Code §§ 154.053 and 154.253(a), and 7 Texas Administrative Code § 25.11(c) and (d). In particular, Respondent has violated Texas Finance Code § 154.053 and 7 Texas Administrative Code § 25.11(c) and (d) by failing to maintain records relating to the August 20, 2008 contract and he has violated Texas Finance Code § 154.253(a) by failing to deposit into the permit holder's restricted bank account 90% of the amount collected for the August 20, 2008 contract.

10. The Commissioner finds that these violations constitute sufficient cause for issuance of an order to cancel Respondent's permit under Texas Finance Code § 154.109(a)(1), and to order Respondent to cease and desist from selling PFBCs under Texas Finance Code § 154.108.
11. The Commissioner is authorized by Texas Finance Code § 154.4081 to issue an emergency order that takes effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC. As stated in paragraph 6, above, the Commissioner finds that such harm is threatened.
The immediate seizure of accounts and records is warranted.
12. The Commissioner is authorized by Texas Finance Code § 154.412 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 of the Texas Finance Code; or
 - b. is subject to an order to cancel its permit.
13. The Commissioner finds by credible evidence that Respondent has failed to deposit money in accordance with Subchapter F of Chapter 154 of the Texas Finance Code, by failing to deposit into the permit holder's restricted bank account 90% of the amount collected on one PFBC.
14. The Commissioner finds by credible evidence that Respondent is the subject of this order to cancel his permit.
15. The Commissioner finds that these violations constitute sufficient cause for issuance of an order to Respondent to seize his prepaid funeral accounts and records under Texas Finance Code § 154.412.
16. The Commissioner is authorized by Texas Finance Code § 154.412(c) to cause the seizure order to take effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC.
17. The Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC for the reasons stated in paragraph 6, above, and also finds that the seizure order should be given immediate effectiveness because if Respondent has notice of the seizure order, he might destroy records of other illegal contracts or attempt to withdraw trust funds from the depository in which they are located.

III. Order

In accordance with Texas Finance Code § 154.109(a)(1), it is ORDERED that Respondent's prepaid funeral contract permit No. 485 is cancelled.

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

In accordance with Texas Finance Code § 154.412, 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 number _____ in Junction National Bank, N.A., 701 Main Street, Junction, Texas 76849;
2. all other accounts in which prepaid funeral funds, including earnings, may be 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 Gentry Fife Funeral Home in Junction, Texas and Gentry Funeral Home in Mason, Texas.

IV. Effective Dates

Pursuant to Texas Finance Code §§ 154.4081 and 154.412(c), this Order Cancelling Permit, to Cease and Desist Activity, and to Seize Accounts and Records will take effect immediately.

V. Notice of Right to Hearing

Pursuant to Texas Finance Code §§ 154.4081(c) and 154.412(c-1) and (d), Respondent has the right to request in writing an opportunity for a hearing to show that the emergency order should be stayed.

VI. Service

This Order will be served on Jeffrey Gentry via personal service.

Signed on this 1st day of March, 2010.

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