

ORDER NO. 2010-061

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
CRENSHAW FUNERAL HOME	§	
PERMIT NUMBER 1070	§	
AND	§	COMMISSIONER OF TEXAS
DON H. NAPIER, OWNER	§	
CRENSHAW FUNERAL HOME	§	
	§	
SEGUIN, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of Crenshaw Funeral Home, Seguin, Texas and Don H. Napier, owner, Crenshaw Funeral Home, (“Respondents”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) for consideration and action. Respondents and the Texas Department of Banking (“Department”) have entered into an agreement and jointly request the Commissioner to dispose of this matter pursuant to § 2001.056, Texas Government Code. 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.

I. Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Chapter 154, Texas Finance Code, and §§ 2001.171 et seq, Texas Government Code.
2. On July 19, 1996, a Cease and Desist Order was issued by the Department against Mr. Don H. Napier and May – Crenshaw Funeral Home for selling prepaid funeral benefits contracts (“PFC”) without the permit required by Chapter 154, Texas Finance Code, and the May – Crenshaw Funeral Home and Don H. Napier were ordered to “cease and desist any and all prepaid funeral operations whatsoever.” On January 9, 1997, Agreed Order No. 1997-012 was issued by the Department, whereby Mr. Napier paid \$7,467.00 in restitution and a \$1,500.00 civil penalty and Don H. Napier and May-Crenshaw Funeral Homes agreed to abide by the terms and conditions of the July 19, 1996 Cease and Desist Order.

3. After the payment of all restitution and civil penalties owed to the Department by Respondents, the Department issued Permit Number 1070 to Respondent Crenshaw Funeral Home of Seguin, Texas on August 25, 2005, for the sale of trust-funded PFCs. Respondent Crenshaw Funeral Home has reported zero contracts to the Department from the date of the issuance of the permit. This permit is currently restricted as a non-selling permit, and there are no outstanding trust-funded PFCs.
4. The Department received a complaint that on or about November 15, 2002, the Respondents sold to L____ B____¹ a PFC in the amount of \$3,000.00. This transaction occurred at a time after the Cease and Desist Order and Agreed Order were issued by the Department and before the Respondents obtained a permit pursuant to Chapter 154, Texas Finance Code, to sell trust-funded PFCs. This PFC was not written on the correct contract form approved by the Department. The existence of this illegal PFC was not disclosed to the Department at the time a permit was issued by the Department to Respondents in 2005 or during subsequent permit reviews.
5. On September 9, 2010, the Commissioner issued Cease and Desist Order No. 2010-054 ordering the Respondents to cease and desist from the sale of any PFCs for which a permit is required under Chapter 154, Texas Finance Code, whether conducted through Respondents' activities or through those of others and cancelling Permit Number 1070. This Order No. 2010-054 has not been appealed and it is final.

II. Conclusions of Law

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

1. The Commissioner has the authority to issue this Order and to assess restitution pursuant to § 154.411, Texas Finance Code.
2. Respondents have agreed to make restitution in the amount of \$3,000.00 plus interest in the amount of \$624.00.
3. The Commissioner has the authority to issue this Order and to assess penalties pursuant to §§ 154.406 and 154.4061, Texas Finance Code.

¹ Purchaser of the PFC is referred to by their initials to preserve their privacy.

4. Respondents have agreed to pay an administrative penalty in the amount of \$3,000.00.
5. Any violation of the Cease and Desist Order No. 2010-054 in the future could subject Respondents to additional regulatory or enforcement actions authorized by §§ 154.401 to 154.414, Texas Finance Code. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapters 35 and 154, Texas Finance Code or other applicable law.
6. For purposes of this proceeding, Respondents 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 and an order for restitution;
 - 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 §§ 2001.171 et seq., Texas Government Code, and any other challenge to the validity of this Order.
7. Respondents' sale and acceptance of money for a PFC without being licensed as required by Chapter 154, Texas Finance Code, is a violation of Chapter 154, § 154.101, Texas Finance Code, and a violation of the previous Agreed Order with Respondents.
8. Respondents violated Chapter 154, § 154.101, Texas Finance Code, by selling a PFC to L____ B____ without holding a permit issued by the Department. Pursuant to the provisions of § 154.158, Texas Finance Code, L____ B____ is entitled to a refund because the PFC was sold in violation of § 154.101, Texas Finance Code. Had these funds been properly deposited, earnings would have accrued. A conservative simple interest calculation of 2.6% annually for eight years would be \$624.00.

9. Respondents' failure to disclose the PFC transaction with L____ B____ when applying for a permit violated § 154.109(a), Texas Finance Code, because it concealed a material fact in the permit application.
10. The PFC transaction with L____ B____ occurred after the issuance of a Cease and Desist Order and the subsequent Agreed Order prohibiting the sale of PFCs without a permit. At the time of the sale, Respondents did not possess a permit under Chapter 154, Texas Finance Code. This sale, when combined with the past transactions covered by the Cease and Desist Order, constitute a pattern of willful disregard within the meaning of §§ 154.406 and 154.4061, Texas Finance Code.

III. Order

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 comply with the provisions of Commissioner's Order No. 2010-054 issued September 9, 2010, that ordered Respondents to cease and desist from the sale of any PFCs for which a permit is required under Chapter 154, Texas Finance Code, whether conducted through Respondents' activities or through those of others.
2. Respondents are ORDERED to comply with the provisions of Commissioner's Order No. 2010-054 issued September 9, 2010 cancelling Permit Number 1070 and to immediately surrender the permit to the Department.
3. Respondents are ORDERED to pay restitution of the purchase price of the PFC previously sold to L____ B_____ in the amount of Three Thousand Dollars (\$3,000.00) plus interest in the amount of Six Hundred Twenty-Four Dollars (\$624.00) accrued since the date of purchase. The Three Thousand Six Hundred Twenty-Four Dollars (\$3,624.00) is due and payable upon the execution of this Agreed Order.
4. Respondents are ORDERED to pay an administrative penalty in the amount of Three Thousand Dollars (\$3,000.00) for violations of §§ 154.101, 154.109(a), Texas Finance Code, and a violation of the 1997 Agreed Order. The schedule for payment of the administrative penalty shall be as follows: (a) One Thousand Dollars (\$1,000.00) upon the execution of this Agreed Order; and (b) the remainder Two Thousand Dollars (\$2,000.00) is

to be paid in twelve monthly installments, eleven payments of One Hundred Sixty-Six and 66/100 Dollars (\$166.66) and a final payment of One Hundred Sixty-Six and 74/100 Dollars (\$167.74).

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

Signed this 1st day of November, 2010.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

Crenshaw Funeral Home

/s/ Don H. Napier
Don H. Napier
Owner

Texas Department of Banking

/s/ Robert Giddings
Robert Giddings
Assistant General Counsel