

ORDER NO. 2011-038

IN THE MATTER OF:

**BRAGG CHISM, W. H. BODY,
AND DENISE SPRATT-LARRY
DBA LINDEN FUNERAL HOME**

LINDEN, TEXAS

BEFORE THE BANKING

**§ §
§ § COMMISSIONER OF TEXAS**

**§ §
§ § AUSTIN, TRAVIS COUNTY, TEXAS**

**EMERGENCY ORDER TO CEASE AND DESIST
ACTIVITY, AND TO SEIZE RECORDS AND FUNDS**

On this day, the matter of Bragg Chism, W. H. Body,¹ and Denise Spratt-Larry dba Linden Funeral Home, located in Linden, Texas (Respondents), was submitted to the Banking Commissioner of the State of Texas (Commissioner) for consideration and action.

I. Findings

1. Respondents are the owners of and do business as Linden Funeral Home, Linden, Texas. They have been the owners of Linden Funeral Home since at least 2000.
2. Linden Funeral Home has never held a permit required by Texas Finance Code § 154.101 to sell prepaid funeral benefits contracts (PFBCs).
3. On September 26, 2011, the Texas Department of Banking (Department) received a complaint letter from RB.² RB stated that she purchased a PFBC from Linden Funeral Home in 2001, for which she paid \$5,190.00. In 2002-2003, RB paid Linden Funeral Home \$550.00 for a grave marker and the services of a clergyman. RB stated in her complaint letter that she had decided to move from Linden and had contacted Linden Funeral Home to seek a refund of her money. RB stated that the funeral home director told her that funeral home staff would drive to wherever RB was located to perform the services. RB did not desire this suggested resolution, and asked the Department to advise her how to proceed.

¹ According to records of the Texas Funeral Service Commission, these are the owners of Linden Funeral Home as of March 30, 2011. Other information the Department has received, however, indicates that W.H. Body died December 29, 2010.

² The Department does not state the full names of PFBC purchasers to protect the privacy of the purchaser.

4. With her letter, RB submitted a copy of her contract and the checks she paid. The contract was not written on the required form for authorized PFBCs; it was written on a form used when a funeral is arranged at the time of death.
5. On September 29, 2011, the Department sent Respondent Chism a letter by certified mail, informing him of RB's complaint. The Department instructed Respondent Chism to cease and desist from writing any new PFBCs or accepting related funds. The Department demanded that Respondent Chism provide a written response explaining how Linden Funeral Home conducts its business and submitting copies of all similar prepaid funeral benefit contracts and related account ledgers. Finally, the Department demanded that Respondent Chism send, no later than Oct. 17, 2011, a cashier's check for all the funds RB paid.
6. On October 13, 2011, the Department received a letter from RB stating that on October 5, 2011, Respondent Spratt-Larry refunded her the total amount paid.
7. On October 31, 2011, the Department received its September 29, 2011, certified letter returned because it was unclaimed.
8. On November 2, 2011, the Department faxed its September 29, 2011, letter to Respondent Chism to Linden Funeral Home. The Department acknowledged the refund of the funds to RB, but demanded that Respondent Chism submit the other required information by November 7, 2011.
9. Respondent Chism has failed to respond in any way to the Department's letter and fax. Nor has the Department received a communication from any of the other Respondents.
10. Money collected for RB's PFBC was not properly placed in trust as required by Texas Finance Code § 154.253.
11. RB's PFBC was sold at Linden Funeral Home when Linden Funeral Home did not hold a permit to sell PFBCs.
12. Irreparable harm is threatened to the public and one or more beneficiaries under a PFBC because:
 - a. Linden Funeral Home has written at least one PFBC for which it did not have a permit and for which money was not properly put in trust;

- b. Respondents have not responded to the Department's demand that they submit a written response explaining how their business is conducted and submitting copies of all similar PFBCs and related account ledgers;
- c. based on the Department's experience in past cases, when a funeral home takes actions such as selling prepaid funeral benefits without complying with the laws governing PFBCs and the owners of the funeral home fail to respond to Department demands for further information, more illegal contracts come to light;
- d. the records and contracts may be removed or destroyed; and
- e. money that should have been deposited in trust for PFBC beneficiaries or forwarded to an insurance company as insurance premiums may be removed or converted.

II. Conclusions

- 13. 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 Chapter 154, or a final order of the Commissioner, or a rule of the Finance Commission.
- 14. The Commissioner finds by credible evidence that Respondents have violated Texas Finance Code § 154.101 by selling prepaid funeral benefits and accepting money for prepaid funeral benefits under a contract without having a permit issued under Texas Finance Code Chapter 154.
- 15. The Commissioner finds by credible evidence that Respondents have violated Texas Finance Code § 154.159 by not properly administering money received for a PFBC as prescribed by Finance Code §§ 154.253 and 154.203.
- 16. The Commissioner finds these violations constitute sufficient cause for issuance of an order to cease and desist from selling PFBCs under Texas Finance Code § 154.408.
- 17. 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 12 above, the Commissioner finds that such harm is threatened.
18. The Commissioner is authorized by Texas Finance Code § 154.412 to issue an order seizing records that relate to the sale of PFBCs and to seize accounts in which prepaid funeral funds, including earnings, may be held if the Commissioner finds by examination or other credible evidence that the person failed to deposit or remit money in accordance with the requirements of Chapter 154. The Commissioner finds that Respondents have so failed to deposit or remit money.
 19. The Commissioner is authorized by Texas Finance Code § 154.412(c) to cause the seizure order to take immediate effect if 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 12 above, the Commissioner finds that such harm is threatened.

III. Order

In accordance with Texas Finance Code §§ 154.408 and 154.4081, Respondents are ORDERED to cease and desist from engaging in the sale of any prepaid funeral benefits contracts without proper authorization under Texas Finance Code Chapter 154.

In accordance with Texas Finance Code § 154.412, the following is hereby further ORDERED:

1. the Texas Department of Banking is authorized to immediately seize and take possession of the funds, contracts, and other records of Respondents that relate to the sale of prepaid funeral benefits, wherever they may be located, held, or found;
2. Respondents shall immediately gather and surrender to the Texas Department of Banking all contracts and other records relating to the sale of prepaid funeral benefits.
3. Respondents shall immediately inform the Texas Department of Banking of the location and identifying information of all accounts in which prepaid funeral funds, including earnings, may be held; and
4. Any bank, financial institution or other person or entity that is holding accounts of Respondents or Linden Funeral Home in which prepaid funeral funds, including earnings, may be held shall immediately freeze and allow the Texas Department of Banking to take possession of all such accounts.

IV. Effective Date

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

V. Notice of Right to Hearing

Under Texas Finance Code §§ 154.4081(c) and 154.412(c-1), Respondents have the right to request in writing a hearing to show that the emergency order should be stayed.

VI. Service

This Order will be served on Bragg Chism, W. H. Body, and Denise Spratt-Larry dba Linden Funeral Home, Linden, Texas, via certified mail, return receipt requested to the following address:

Linden Funeral Home
1411 Nelson Blvd
Linden, Texas 75563

This Order will also be served on Respondents by personal service.

Signed on this 14th day of November, 2011.

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

Letter Agreement