

ORDER NO. 2012-003

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
J & B FUNERAL HOME, INC.	§	
DBA GATESVILLE FUNERAL HOME	§	COMMISSIONER OF TEXAS
	§	
	§	
GATESVILLE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, came on for consideration by Texas Banking Commissioner Charles G. Cooper (“Commissioner”) the matter of J & B Funeral Home, Inc. dba Gatesville Funeral Home, Gatesville, Texas (“Respondent”). This matter concerns Respondent’s selling prepaid funeral benefits and failing to remit those funds to an insurance company who was to fund the prepaid funeral benefits contract, in violation of state law. Assistant General Counsel Deborah H. Loomis represents the Texas Department of Banking (“Department”). Respondent is represented by Keith Hopkinson.

1. Respondent and the Department jointly request the Commissioner to dispose of this matter pursuant to the provisions of Texas Government Code § 2001.056 by entering this Agreed Order. Respondent and the Department stipulate to the facts found by the Commissioner and the parties agree to comply with the terms of this Agreed Order.
2. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Texas Finance Code Chapter 154.
3. Respondent operates Gatesville Funeral Home (Gatesville) in Gatesville, Texas.
4. In 2009, VC¹ came to Gatesville to purchase prepaid funeral benefits for her mother-in-law, DQ, and her uncle, RR. VC met with Keith Allison (Allison), Gatesville’s employee, who drew up two insurance-funded prepaid funeral contracts (PFCs), written on forms provided by Homesteaders Life Company (Homesteaders). Homesteaders holds a permit to sell insurance-funded prepaid funeral benefits, and Allison was acting as its agent. In addition to the prepaid funeral benefits, VC also purchased monuments for DQ and RR.

¹ Initials are used to preserve the privacy of the purchasers and beneficiaries of prepaid funeral benefits contracts.

5. DQ's PFC was in the amount of \$10,690.00 and her monument cost \$1,565.00, for a total of \$12,255.00. RR's PFC was in the amount of \$10,390.00 and his monument cost \$2,150.00, for a total of \$12,540.00. The total for all was \$24,795.00.
6. On May 4, 2009, Allison wrote the Beard law firm in Waco, Texas, asking it to make a check payable to Gatesville for \$24,795.00, and stating that "we will pay the appropriate companies."
7. On May 26, 2009, Rod Squires of the Beard law firm sent a check payable to Gatesville from the firm's IOLTA² trust account in the amount of \$24,795.00.
8. Neither Allison nor Respondent ever forwarded to Homesteaders the amount due as premiums for the policies funding the PFCs.
9. On June 17, 2011, Respondent sent a refund check for \$21,800.00 to the Beard law firm, representing the purchase price of the PCFs for DQ and RR.
10. On June 23, 2011, Respondent sent a check for \$1,928.90 to the Beard law firm, representing interest on the amounts paid for the PFCs.
11. On July 7, 2011, VC filed a complaint with the Department, explaining the occurrence, and acknowledging that the money paid for the PFCs had been refunded.
12. On July 25, 2011, the Department corresponded with Respondent regarding the complaint. Correspondence between the Department and Respondent's attorney resulted in this agreement.
13. Respondent admits that its employee failed to forward the funds received for the PFCs to the insurance company.
14. Respondent thereby violated Texas Finance Code § 154.203.
15. Respondent has repaid the funds paid for the PFCs, with interest, to the purchaser.
16. By signing this Agreed Order, Respondent swears that the PFC discussed in this Agreed Order is the only PFC in which it has taken any actions that violate Texas Finance Code Chapter 154.
17. The Commissioner has the authority to issue this Agreed Order and to assess penalties pursuant to Texas Finance Code § 154.406. The imposition of an administrative penalty against

² IOLTA stands for Interest on Lawyer Trust Accounts. A lawyer who receives funds that belong to a client must place those funds in a trust account separate from the lawyer's own money. Client funds are deposited in an IOLTA account when the funds cannot otherwise earn enough income for the client to be more than the cost of securing that income. Interest from lawyer trust accounts is pooled to provide civil legal aid to the poor and support improvements to the justice system. Source: IOLTA.org.

Respondent in the amount of \$3,000.00 is appropriate and reasonable given the seriousness of the violation; and the facts that Respondent has no previous history of a violation, Respondent has admitted guilt, Respondent previously paid restitution, and Respondent has agreed to pay the penalty.

18. Any violation of this Agreed Order could subject Respondent to additional regulatory or enforcement actions authorized by Texas Finance Code Chapter 154, Subchapter I. Nothing in this Agreed Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Texas Finance Code Chapter 154, or other applicable law.
19. This Agreed Order only compromises actions that could be brought against Respondent by the Department. The Texas Funeral Service Commission and the Texas Department of Insurance are separate state agencies which may take additional actions against Respondent. The Department does not control the actions of the Texas Funeral Service Commission or the Texas Department of Insurance.
20. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent of this Agreed Order;
 - b. The right to present defenses to the allegations;
 - c. Notice and hearing prior to imposition of an administrative penalty;
 - 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 Agreed Order by the Texas Finance Commission; and
 - h. Judicial review of this Agreed Order as provided by Texas Government Code §§ 2001.171 et seq. and any other challenge to the validity of this Agreed Order.
21. Respondent agrees to pay an administrative penalty in the amount of \$3,000.00.
22. Respondent and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

ORDER

It is hereby ORDERED, ADJUDGED, and DECREED that:

1. Respondent shall not engage in activities in violation of Texas Finance Code Chapter 154.
2. Respondent shall pay the administrative penalty amount of \$3,000.00 to the Department within five days of the date this Agreed Order is signed by the Banking Commissioner.
3. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondent that come to the attention of the Department.
4. This Order against Respondent is effective on the date signed by the Commissioner, and subject to its terms, Respondent may not appeal.
5. Respondent and the Department agree to the factual findings, legal conclusions and terms, and conditions of this Agreed Order.

Signed in Austin, Texas, on this 16th day of February, 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

J & B Funeral Home, Inc. dba Gatesville Funeral Home

By: /s/ James Vandiver, Jr.
Name: James Vandiver, Jr.
Title: President
Date: February 13, 2012

State of Texas §
 §
County of McLennan §

Sworn to and subscribed before me on the 13th day of February, 2012, by James Vandiver, Jr.

/s/ M. E. Livengood
Notary Public's signature

APPROVED AS TO FORM:

/s/ Keith Hopkinson
Keith Hopkinson
Winstead Law Firm
Attorney for Respondents

February 12, 2012
Date

/s/ Deborah H. Loomis
Deborah H. Loomis
Assistant General Counsel
Texas Department of Banking

February 15, 2012
Date