

ORDER NO. 2012-007

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
NATHAN SHANNON, FORMER OWNER	§	
OF SHANNON-MCBEE FAMILY	§	
FUNERAL HOME	§	COMMISSIONER OF TEXAS
	§	
	§	
MATADOR AND PADUCAH, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**ORDER TO CEASE AND DESIST ACTIVITY
AND SEIZE PREPAID FUNERAL RECORDS**

On this day, the matter of Nathan Shannon (“Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of State of Texas, for consideration and action.

I. Findings of Fact

1. Respondent was a 50/50 partner with Judi McBee (“McBee”) in the Shannon-McBee Family Funeral Home (the “Funeral Home”) in Matador and Paducah, Texas until December 30, 2011, when Respondent and McBee sold the Funeral Home. A new funeral home is being operated at the same locations under the name Zapata Funeral Home.
2. Respondent worked at the Funeral Home at 1314 Main Street, Matador, Texas, 79244.
3. Respondent does not hold a permit to sell trust-funded prepaid funeral benefits.
4. Respondent holds a license from the Texas Department of Insurance to sell pre-need insurance benefits. At the pertinent times, Respondent was an agent for Funeral Directors Life Insurance Company (“FDLIC”), a company that funds prepaid funeral benefits contracts issued by Funeral Agency Inc. (“FAI”). FAI holds Prepaid Funeral Benefits Permit No. 673, issued by the Texas Department of Banking (“Department”) under Chapter 154, Texas Finance Code.
5. On January 12, 2012, the Department received a communication from an inspector for the Texas Funeral Service Commission that he had found two prepaid funeral benefits contracts (“PFBCs”) that did not appear to be handled in accordance with Texas Finance Code Chapter 154. In particular, it appeared that funds received by Respondent from the sale of one PFBC were never submitted to a licensed insurance company as insurance premiums and the funds from the sale of the other PFBC were not sent to the insurance company for approximately 11 months.

6. The Department investigated the matter further. The Commissioner finds that credible evidence exists that Respondent has violated the following sections of Chapter 154 of the Texas Finance Code: §§ 154.151, 154.159, and 154.203.
7. In regard to a PFBC purchased by BB¹ for his own benefit, the credible evidence shows that the following occurred:
 - a. On January 21, 2011, BB entered into a PFBC written on the form of FAI and signed by Respondent as both agent for FAI and as representative of the Funeral Home. The PFBC was in the amount of \$7,467.00. The PFBC was to be funded by an insurance policy which BB would pay for in installments.
 - b. BB made payments totaling \$5,137.35 which Respondent failed to transmit to FDLIC, but instead misappropriated. Respondent also failed to send the policy application or PFBC to FAI/FDLIC.
 - c. When Respondent and McBee sold the Funeral Home, Respondent agreed that the \$5,137.35 could be taken out of his share of the sales proceeds and transmitted to FDLIC. As of February 13, 2012, FDLIC verifies that this amount has been paid on BB's policy.
8. In regard to the PFBC sold to JP² for her own benefit, the credible evidence shows that the following occurred:
 - a. On or about December 23, 2009, JP purchased preneed benefits for herself from the Respondent in the amount of \$3,312.50. Respondent did not enter into a PFBC on the approved contract form with FAI, but instead simply circled items on a price list.
 - b. JP wrote the Funeral Home a check for \$3,312.50, which Respondent endorsed. Respondent did not put the money in trust or send it to an insurance company, but instead misappropriated it.

¹ Initials are used to preserve privacy.

² Initials are used to preserve privacy.

- c. When Respondent and McBee sold the Funeral Home, Respondent's father repaid the \$3,312.50. A legitimate PFBC was written by the Zapata Funeral Home as provider and FAI as permit holder. As of February 13, 2012, FDLIC verifies that a policy for JP is paid in for the amount of \$3,313.00.

II. Conclusions of Law

1. Respondent sold the PFBC to JP in violation of § 154.151, Texas Finance Code, because he did not use an authorized PFBC form.
2. Respondent violated §§ 154.159 and 154.203, Texas Finance Code, by failing to deposit funds collected for two PFBCs with the insurance company for which he was an agent.
3. The Commissioner is authorized by § 154.408, Texas Finance Code, 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 Chapter 154, Texas Finance Code.
4. The credible evidence of the above-described violations of the Texas Finance Code constitute sufficient cause for issuance of a cease and desist order to Respondent under § 154.408, Texas Finance Code.
5. The Commissioner is authorized by § 154.412, Texas Finance Code to seize records relating to the sale of prepaid funeral benefits if the Commissioner finds, by examination or other credible evidence, that the person (1) failed to deposit or remit money in accordance with Subchapter E or F of Chapter 154, Texas Finance Code or (2) misappropriated or converted money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract.
6. Respondent's acceptance of money for PFBCs sold to the individuals identified in the Findings of Fact recited above, without promptly depositing the funds in trust or transmitting the funds to a licensed insurance company as insurance premiums, and Respondent's misappropriation and conversion of that money for his own use constitute sufficient cause for issuance of an order to seize any records Respondent may possess or control relating to prepaid funeral benefits.

III. Order

In accordance with § 154.408, Texas Finance Code, Respondent is ORDERED to cease and desist from engaging in the sale of any prepaid funeral benefits unless Respondent is acting under the authority of a valid permit issued by the Department pursuant to Chapter 154, Texas Finance Code, and Respondent timely submits the collected funds as insurance premiums or deposits the funds in trust, as applicable, as required by Chapter 154, Texas Finance Code.

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

1. the Texas Department of Banking is authorized to seize and take possession of the contracts and other records of Respondent that relate to the sale of prepaid funeral benefits, wherever they may be located, held, or found;
2. Respondent shall gather and surrender to the Texas Department of Banking all contracts and other records relating to the sale of prepaid funeral benefits. The surrender shall be accomplished by contacting Deborah H. Loomis, Assistant General Counsel, Texas Department of Banking at (512) 475-1282 within one business day of the effective date of the Order and making arrangements with her for the transfer of the records to the Department.

Any violation by Respondent of this Order to Cease and Desist and to Seize Records may result in additional regulatory or enforcement actions authorized by Chapter 154, Texas Finance Code. Nothing in this Order to Cease and Desist and to Seize Records shall be deemed to diminish or restrict the regulatory or enforcement power of the Department, the Commissioner, the Finance Commission of Texas, or the Texas Department of Insurance to take further action in this matter.

IV. Effective Date and Right to Hearing

Pursuant to §§ 154.408(d) and 154.412(d), Texas Finance Code, this Order to Cease and Desist and to Seize Records will take effect on March 23, 2012 (which is the 16th day after the date this Order was mailed to Respondent), unless on or before March 22, 2012 (which is the 15th day after the date this Order was mailed), Respondent requests a hearing pursuant to §§ 154.408(d) and/or 154.412(d), Texas Finance Code.

V. Service

This Order will be served on Nathan Shannon by certified mail, return receipt requested, sent on 7th day of March, 2012, and by personal service to:

Nathan Shannon
710 2nd Street
Roaring Springs, TX 79256

Signed on this 5th day of March, 2012.

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