

Order No. 2012-034
Docket No. BE-12-12-006

IN THE MATTER OF	§	BEFORE THE BANKING
	§	
ARNOLD J. RAMIREZ, INDIVIDUALLY	§	
AND AS PRESIDENT OF	§	
WALKER-MORA FUNERAL HOME, INC.;	§	
	§	
AND	§	
	§	
DIANA L. RAMIREZ, INDIVIDUALLY	§	COMMISSIONER OF TEXAS
AND AS SECRETARY/TREASURER OF	§	
WALKER-MORA FUNERAL HOME, INC.	§	
	§	
AND	§	
	§	
WALKER-MORA FUNERAL HOME, INC.	§	
ALICE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

FINAL ORDER

On this day, came on to be considered Docket No. BE-12-12-006. After reviewing the administrative record and the Proposal for Decision issued by the Administrative Law Judge on August 30, 2012, I have determined that the Findings of Fact and Conclusions of Law are supported by the evidence of record and applicable law.

I, therefore, ADOPT the Proposal for Decision, including specifically the Findings of Fact and Conclusions of Law that are set forth in the Proposal for Decision and incorporate in this Order the Findings of Fact and Conclusions of Law therein as if set out in full in this Order.

Based on the record and the Findings of Fact and Conclusions of Law, I conclude that restitution in the amount of \$22,780.00 is justified and appropriate under the factors required by law.

Based on the record and the Findings of Fact and Conclusions of Law, I conclude that an administrative penalty in the amount of \$54,000.00 is justified and appropriate under the factors required by law.

It is, therefore, ORDERED that restitution in the amount of \$22,780.00 be and is hereby ASSESSED against respondents Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc., to the Texas Department of Banking.

It is, therefore, ORDERED that an administrative penalty in the amount of \$54,000.00 be and is hereby ASSESSED against respondents Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc.

Respondents, jointly and severally, are ORDERED to pay restitution in the amount of \$22,780.00 to the Texas Department of Banking.

Respondents, jointly and severally, are ORDERED to pay an administrative penalty of \$54,000.00 to the Texas Department of Banking.

All relief that was requested but not granted or otherwise disposed of herein is denied.

SIGNED and ENTERED this 22nd day of October, 2012.

/s/ Charles G. Cooper
Charles G. Cooper, Commissioner
Texas Department of Banking

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WALKER-MORA FUNERAL HOME, INC.;	§	
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DIANA L. RAMIREZ, INDIVIDUALLY	§	COMMISSIONER OF TEXAS
AND AS SECRETARY/TREASURER OF	§	
WALKER-MORA FUNERAL HOME, INC.	§	
	§	
AND	§	
	§	
WALKER-MORA FUNERAL HOME, INC.	§	
ALICE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

PROPOSAL FOR DECISION

This Proposal for Decision is issued following consideration of the record consisting of testimony and documentary evidence that were received at hearing on August 8, 2012.

STATEMENT OF THE CASE

This is an enforcement action concerning pre-need funeral benefits contracts, which the staff of the Department of Banking initiated. Department staff alleges the respondents, Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc., located in Alice, Texas, violated the Texas Finance Code and orders of the Banking Commissioner by (1) operating without a permit and in violation of a Cease and Desist Order, (2) failing to report to the department nine pre-need funeral benefits contracts, (3) failing

to place in trust funds received from the sale of nine pre-need funeral benefits contracts, and (4) misappropriating the monies that they received from the sale of nine pre-need funeral benefits contracts.

DISCUSSION

Department staff, represented by Daniel Wood and Deborah Loomis, after presenting evidence showing service of notice of hearing, presented evidence of violations consisting of testimony from Jesse Saucillo and documents showing prior department action against the respondents and violations of the Finance Code and department rules.

The respondents did not appear.

The Administrative Law Judge concludes that the evidence proves the respondents committed violations of the law and recommends an order of restitution and the assessment of an administrative penalty.

APPLICABLE LAW

Finance Code Chapter 154 - Prepaid Funeral Services

Chapter 154 of the Finance Code sets forth the law for prepaid funeral services and has the following stated purpose: (1) limit the manner in which a person may accept funds in prepayment of funeral services to be performed in the future; (2) provide a regulatory framework to give the public an opportunity to arrange and pay for funerals in advance of need; and, (3) provide all safeguards to protect the prepaid funds and to assure that the funds will be available to pay for prearranged funeral services.

Section 154.253 requires that, not later than the 30th day after the date of collection, funds received from the sale of pre-need funeral benefits contracts to the public must be deposited in trust or submitted to a licensed insurance company as insurance premiums.

Section 154.411 authorizes the Banking Commissioner to order a person to pay restitution if the person has misappropriated money entrusted to the person that belongs to the beneficiary of

a pre-need funeral benefits contract.

7 Texas Administrative Code Sections 25.11(d)(4) and 25.11(d)(5)

Department of Banking Rule 25.11 prescribes the record keeping requirements for trust-funded contracts for prepaid funeral benefits.

Rule 25(d)(4) (4) requires the funeral home owner to retain for the period since the last examination each file pertaining to a matured-contract file for which services were provided by a funeral provider other than the permit holder or a permit holder related by common ownership. The file must contain copies of all documents required for an outstanding prepaid contract and (A) a signed statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral provider; (B) evidence of payment to the servicing funeral provider; and, (C) a copy of a Texas certified death certificate or a death certificate from the state in which death occurred.

Rule 25.11(d)(5) requires the owner of a funeral home to retain, for the period since the last examination, each file pertaining to a canceled prepaid contract. The file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval, and evidence of payment of the cancellation benefit.

Finance Code Section 154.406 - Enforcement

Section 154.406 provides, in pertinent part, that after notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

- (1) violates this chapter or a final order of the commissioner or rule of the commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department; or

- (2) engages in a pattern of violations, as determined by the commissioner.
- (b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.
- (c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter.

PETITIONER’S ARGUMENT REGARDING THE AMOUNTS OF RESTITUTION AND OF PENALTY

The evidence shows the respondents misappropriated a total of \$22,780.00 that they received from the sale of the nine pre-need funeral benefits contracts and that restitution in that amount is justified.

A penalty in the amount of \$54,000.00 is warranted on the record of the many days of violation for each of the nine customers, whose payments were not placed in trust and were misappropriated. Mr. Wood noted that the statute provides for a penalty of up to \$1,000.00 for each day a violation occurs and that the evidence proves many days of violations.

ANALYSIS BY THE ADMINISTRATIVE LAW JUDGE

The evidence proves that the respondents failed to report and keep proper records of nine pre-need funeral benefits contracts. The evidence proves that the respondents received \$22,780.00 in payment for the nine contracts, did not place the monies in trust, and misappropriated the monies. The evidence proves the respondents violated orders of the Banking Commissioner.

Assessment of an administrative penalty is discretionary. Under Finance Code 154.406, a penalty may be assessed against a person who engages in a pattern of violations. In this case, a

pattern of violations has been established. The evidence shows the recurrence of the same violations for a period of four years, with the staff notifying the respondent of the violations each year.

The Commissioner Has Discretion To Determine the Amount of Penalty

Section 154.406(c) provides that, in determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter.

In this case, the respondents took money from people for pre-need funeral benefits and appropriated it to their own use. They also operated without a permit and directly violated the Commissioner's cease and desist order. The respondents have a history of violations and have demonstrated a lack of good faith in their actions related to the sale and maintenance of contracts for pre-need funeral benefits and to their dealings with the department. A substantial penalty is justified.

Based on the evidence of record and applicable law, the Administrative Law Judge makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Proper notice of hearing was timely given to the respondents.
2. The respondents failed to appear at the hearing.
3. Arnold J. Ramirez, Individually and as President, and Diana L. Ramirez,

Individually and as Secretary/Treasurer operated Walker-Mora Funeral Home, Inc., at 422

East Front Street, Alice, Texas, under Permit No. 546 until the Banking Commissioner cancelled the permit by order dated December 9, 2009.

4. A Final Order signed by the Banking Commissioner on September 25, 2009, ordered Walker-Mora Funeral Home, Inc., to pay the department restitution in the amount of \$2,673.00 and a civil penalty in the amount of \$8,000.00 for violations of the Finance Code and Department Rules related to the sale of pre-need funeral benefits contracts. Respondents did not comply with the order.

5. A Final Order signed by the Banking Commissioner on December 4, 2009, ordered the cancellation of Permit No. 546 of Walker-Mora Funeral Home, Inc., ordered Walker-Mora Funeral Home, Inc., to cease and desist activity, and ordered the seizure of funds and records. The respondents did not comply with the order.

6. A Final Order signed by the Banking Commissioner on August 5, 2010, ordered Walker-Mora Funeral Home, Inc., to pay restitution in the amount of \$9,410.00, administrative penalties in the amount of \$16,000.00, and costs in the amount of \$992.45, for operating in violation of the Finance Code and an order of the Banking Commissioner, which cancelled the respondents' permit. The respondents did not comply with the order.

7. The respondents failed to keep proper records and report to the department nine pre-need funeral benefits contracts after they were made.

8. The respondents received payments for the nine pre-need funeral benefits contracts that they failed to report to the department, one as recently as September, 2011.

9. The respondents received payments from the sale of the nine pre-need funeral benefits contracts in the amount of \$22,780.00.

10. The respondents failed to place in trust as required by law the \$22,780.00 that they received from the sale of the nine pre-need funeral benefits contracts.

11. The respondents misappropriated the \$22,780.00 that they received for the nine pre-need funeral benefits contracts.

CONCLUSIONS OF LAW

1. The Commissioner of Banking has jurisdiction to enforce provisions of the Texas Finance Code concerning the business of pre-need funeral benefits contracts and, specifically, with respect to the actions of Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc., which are charged in this docket.

2. Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc, violated the Texas Finance Code and orders of the Banking Commissioner by conducting business related to pre-need funeral benefits contracts after August 5, 2010.

3. Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc, violated the Texas Finance Code and an order of the Commissioner of Banking by not keeping proper records of and by not reporting to the department nine pre-need funeral benefits contracts.

4. Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc., violated the Texas Finance Code by receiving payments in the amount of \$22,780.00 from the sale of nine pre-need funeral benefits contracts, which they did not place in trust in accordance with Texas Finance Code § 154.253.

6. Arnold J. Ramirez, Individually and as President of Walker-Mora Funeral Home, Inc., Diana L. Ramirez, Individually and as Secretary/Treasurer of Walker-Mora Funeral Home, Inc., and Walker-Mora Funeral Home, Inc, violated the Texas Finance Code by misappropriating \$22,780.00 they received from the sale of nine pre-need funeral benefits contracts.

7. An order of restitution in the amount of \$22,780.00 is authorized by Finance Code Section 154.411.

8. The repeated violations of the same provisions of the Finance Code and of orders of the commissioner over a period of years constitutes a pattern of violations.

9. The Commissioner of Banking, in his discretion, has the authority to assess an administrative penalty against in an amount up to \$1,000 for each day of violation.

10. An administrative penalty the amount of \$54,000.00 is reasonable and justified under the provisions of the Texas Finance Code.

RECOMMENDATION

Based on the evidence and the Finance Code, the evidence supports an order requiring the respondents to pay restitution in the amount of \$22,780.00 and an administrative penalty in the amount of \$54,000.00.

Respectfully submitted,

/s/ Donald N. Walker
Donald N. Walker
Administrative Law Judge

SIGNED: August 30, 2012