

ORDER NO. 2012-038

DOCKET NO. BE-12-12-045

| | | |
|--|---|-------------------------------------|
| 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 |

AGREED ORDER

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. This matter concerns the assessment of administrative penalties against Respondent for violations of Texas Finance Code Chapter 154, as described in the Notice of Hearing served by personal service on Respondent on September 29, 2012, and restated here. In lieu of the scheduled hearing, the Department and Respondent wish to enter an agreement regarding the administrative penalty and other terms as described below.

1. Respondent and the Texas Department of Banking (Department) jointly request the Commissioner to dispose of this matter pursuant to the provisions of the Government Code § 2001.056 by entering this Agreed Order. Respondent and the Department stipulate to the facts found by the Commissioner in Order No. 2012-007, and as restated here, 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 and Texas Government Code §§ 2001.171 et seq., and that the Commissioner has the authority to issue this Agreed Order under Texas Government Code § 2001.056.
3. Respondent was a 50/50 partner with Judi McBee (McBee) in the Shannon-McBee Family Funeral Home (Funeral Home) in Matador and Paducah, Texas until December 30, 2011, when Respondent and McBee sold the Funeral Home. Respondent worked at the Funeral Home at 1314 Main Street, Matador, Texas, 79244. A new funeral home is being operated at the same locations under the name Zapata Funeral Home.

4. On March 5, 2012, the Commissioner issued Order No. 2012-007, which required Respondent to cease and desist from engaging in the sale of prepaid funeral benefits, and to gather and surrender to the Department all documents and records relating to the sale of prepaid funeral contracts (PFCs). The Commissioner based Order No. 2012-007 on findings that Respondent: violated Texas Finance Code § 154.151 by failing to use an authorized PFC form; violated Texas Finance Code §§ 154.159 and 154.203 by failing to properly handle funds he collected on two PFCs.
5. At the pertinent times, Respondent did not hold a permit to sell trust-funded PFCs, but did hold 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 PFCs issued by Funeral Agency Inc. (FAI). FAI holds Prepaid Funeral Benefits Permit No. 673, issued by the Department under Texas Finance Code Chapter 154.
6. On January 12, 2012, the Department received a communication from an inspector for the Texas Funeral Service Commission that he had found two PFCs 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 PFC were never submitted to a licensed insurance company as insurance premiums, and the funds from the sale of the other PFC were not sent to the insurance company for approximately 11 months.
7. On January 21, 2011, BB1 purchased a PFC for \$7,467.00, written on the form of FAI and signed by Respondent as both agent for FAI and as representative of the Funeral Home. BB made payments totaling \$5,137.35, which Respondent failed to transmit to FDLIC, in violation of Texas Finance Code §§ 154.159 and 154.203. When Respondent and McBee sold the Funeral Home, Respondent took \$5,137.35 from his share of the proceeds and transmitted it to FDLIC to fund BB's policy. No further restitution to BB is necessary.
8. On or about December 23, 2009, JP2 purchased a PFC for \$3,312.50. Respondent did not use the approved contract form with FAI, but instead simply circled items on a price list, in violation of Texas Finance Code § 154.151. JP paid the full price of the PFC by personal check

¹ Initials are used to preserve privacy.

² Initials are used to preserve privacy.

made out to the Funeral Home. Respondent did not put the money in trust or forward it to an insurance company as required by the Texas Finance Code §§ 154.159 and 154.203. 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. No further restitution to JP is necessary.

9. Texas Finance Code § 154.406 authorizes the Commissioner to assess administrative penalties in this matter. The imposition of an administrative penalty against Respondent in the amount of \$2,000.00 is appropriate and reasonable given the nature of the violations and Respondent's cooperation in resolving this matter.
10. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, the Finance Commission of Texas, the Texas Funeral Commissioner, any other state agency, or restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of law in future proceedings.
11. Respondent has been notified of his right to a hearing on the matter of administrative penalties under Texas Finance Code § 154.406.
12. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. The right to challenge, in any forum, Order No. 2012-007;
 - b. Service upon Respondent of this Agreed Order;
 - c. Notice and hearing prior to imposition of an administrative penalty;
 - d. Review of this Agreed Order by the Texas Finance Commission, and 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 Order.
13. Respondent and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

ORDER

WHEREFORE, based on the foregoing, the Commissioner ORDERS that this matter is resolved in accordance with the following terms:

14. Commissioner's Order No. 2012-007 remains final and unappealable, provided however that to the extent there is any conflict between the terms and conditions of this Agreed Order and Order No. 2012-007, this Agreed Order shall supersede the terms and conditions of Order No. 2012-007.
15. Respondent affirms that to Respondent's knowledge, no other PFCs exist which were not properly funded in accordance with Texas Finance Code Chapter 154. Respondent further affirms that Respondent has not violated Chapter 154 in any other way. Respondent also affirms that if any other PFCs are discovered which were either improperly funded or were not previously surrendered to the Department, Respondent must notify the Department within three business days of locating such PFC.
16. Respondent shall sell no future PFCs without first obtaining the required permit. Respondent shall not engage in any other activities that violate Texas Finance Code Chapter 154.
17. Respondent and the Department agree that an administrative penalty of \$2,000.00 is appropriate given the violations described above. The administrative penalty of \$2,000.00 shall be paid to the Department in four monthly payments of \$500.00 each, due on the first day of each month, beginning December 1, 2012. Accordingly, the final payment of \$500.00 shall be due March 1, 2013. All payments shall be paid by money order or cashier's check.
18. Failure to make a monthly payment by the 5th of the month constitutes a default of the payment terms of this Order, which shall cause the due date of all remaining payments to be accelerated and the entire unpaid balance of the administrative penalty shall become immediately due. Failure to pay the accelerated balance within thirty (30) days after receiving notice of the default and acceleration from the Department will result in referral of this matter to the Office of the Attorney General for collection.
19. This Order is effective on the date signed by the Commissioner.

Signed on this 15th day of November, 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Nathan Shannon
Nathan Shannon

November 9, 2012
Date

State of Texas (
 (
County of Motley (

Sworn to and subscribed before me on the 9th day of November, 2012, by Nathan Shannon.

/s/ Debra Scott
Notary Public's signature

APPROVED AS TO FORM:

/s/ Daniel Wood
Daniel Wood
Assistant General Counsel
Texas Department of Banking

November 15, 2012
Date