

ORDER NO. 2012-040

DOCKET NO. BE-12-12-245

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
GUERRA FUNERAL HOME, INC.	§	
DBA GUERRA FUNERAL HOME	§	COMMISSIONER OF TEXAS
	§	
BROWNSVILLE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of Guerra Funeral Home, Inc., dba Guerra Funeral Home (“Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) for consideration and action. Respondent and the Texas Department of Banking (“Department”) have entered into an agreement and jointly request the Commissioner to dispose of this matter pursuant to § 2001.056, Texas Government Code. Respondent and the Department agree that the Commissioner may make the following Findings of Fact and Conclusions of Law and enter this Agreed Order (“Order”) and agree to the terms of the Order.

I. Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Chapter 154, Texas Finance Code, and §§ 2001.171 et seq, Texas Government Code.
2. Respondent is the owner of Guerra Funeral Home, located at 3955 Coffee Port Road, Brownsville, Texas 78521.
3. On or about October 12, 2004, Respondent sold an illegal Prepaid Funeral Benefits Contracts (PFBC) to CL¹ in the amount of \$3,030.00 and did not place the funds in trust or submit the funds to a licensed insurance company as insurance premiums in compliance with Texas Finance Code, Chapter 154. Respondent has represented to the Department that this is the only remaining PFBC written in violation of Chapter 154, Texas Finance Code.
4. Respondent does not have a permit from the Department to sell PFBCs.

¹ Initials are used to preserve privacy.

5. Upon the death of CL in 2012, the Respondent failed to honor the PFBC.

II. Conclusions of Law

Based upon the foregoing Findings of Fact, the Commissioner makes the following Conclusions of Law:

1. The Commissioner has the authority to order restitution pursuant to § 154.411, Texas Finance Code.
2. The Commissioner has the authority to assess penalties pursuant to § 154.406, Texas Finance Code.
3. Respondent has agreed to pay restitution in the amount of Three Thousand sixty-five 00/100 Dollars (\$3,065.00) which is comprised of the additional \$3,000.00 collected at the time of death of CL and \$65.00 for the flower vehicle included on the preneed contract but not used at the time of death of CL, an administrative penalty in the amount of Two Thousand and 00/100 Dollars (\$2,000.00) and cost of service of the Notice of Hearing by the Secretary of State in the amount of Fifty-five 00/100 Dollars (\$55.00).
4. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondents of this Order;
 - b. The right to present defenses to the allegations;
 - c. Notice and hearing prior to imposition of an administrative penalty and an order for restitution;
 - 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 Order by the Texas Finance Commission; and
 - h. Judicial review of this Order as provided by §§ 2001.171 et seq., Texas Government Code, and any other challenge to the validity of this Order.

5. Nothing in this Agreed Order 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 Funeral Services Commission to take further action in this matter.

III. Order

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner ORDERS that this matter is hereby resolved in accordance with the following terms:

1. Respondent is ORDERED to pay restitution in the amount of Three Thousand sixty-five 00/100 Dollars (\$3,065.00), an administrative penalty in the amount of Two Thousand and 00/100 Dollars (\$2,000.00) for the above referenced violations of §§ 154.101, 154.203, and 154.253, Texas Finance Code, and cost of service, in the amount of Fifty-five 00/100 Dollars (\$55.00). Respondent shall pay the administrative penalty, restitution, and service costs in the total amount of Five Thousand One Hundred Twenty and 00/100 Dollars (\$5,120.00) immediately upon execution of this Order.
2. Respondent is ORDERED to cease the sale of prepaid funeral contracts without the appropriate permit or license.
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.

The effective date of this Order is the date the Order is signed by the Commissioner.

Signed this 29th day of November, 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

Guerra Funeral Home, Inc.
/s/ Agustin G. Martinez
Agustin G. Martinez
Funeral Director in Charge

State of Texas §
 §
County of Hidalgo §

Sworn to and subscribed before me on the 21st day of November, 2012, by Sandra Mae Guerra.

/s/ Sandra Mae Guerra
Notary Public's signature

APPROVED AS TO FORM:

Texas Department of Banking
/s/ Robert Giddings
Robert Giddings
Assistant General Counsel