

ORDER NO. 2016 - 013

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
LAMESA MEMORIAL PARK LLC d/b/a/ LAMESA MEMORIAL PARK,	§	
	§	
DEVIN LEE AVANT, JOSE ELENO MORALES, JR., BRENDA AVANT, AND MICHELLE VELA	§	COMMISSIONER OF TEXAS
	§	
	§	
LAMESA, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**EMERGENCY ORDER TO CANCEL PERMIT TO HOLD AND ADMINISTER
PREPAID FUNERAL BENEFIT CONTRACTS AND
TO SEIZE PREPAID FUNERAL FUNDS AND RECORDS**

On this day, the matter of Lamesa Memorial Park LLC d/b/a Lamesa Memorial Park (the Cemetery) located in Lamesa, Texas; Devin Lee Avant (Devin Avant); José Eleno Morales, Jr. (Morales); Brenda Avant, and Michelle Vela (Vela) (hereinafter jointly called Respondents), was submitted to the Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

I. Findings of Fact

A. Background

1. The Cemetery is a perpetual care cemetery (PCC) operating under certificate of authority number 292. The certificate of authority was issued October 15, 2015. The Cemetery is located at 1010 County Road 20, Lamesa, Texas 79331.
2. Avant and Morales are each 50% owners of the Cemetery. They are the only two managing members of the Cemetery limited liability company. Avant is the president and Morales is the vice-president of the Cemetery limited liability company.
3. Brenda Avant is the wife of Devin Avant. Vela is the fiancée of Morales.

4. The Cemetery possesses a restricted prepaid funeral benefits permit, which allows the Cemetery to maintain and administer prepaid funeral benefit contracts (PFBCs), but not enter into new PFBCs. The Cemetery was issued permit number 1130 on October 15, 2015 and it expires October 15, 2016.
5. On May 24, 2016, the Department conducted an on-site visit of the Cemetery. The examination reflected that the Cemetery holds approximately 151 outstanding trust-funded PFBCs.
6. The prepaid funeral funds that the Cemetery holds are located in account number xxxxxx7032 at Regions Bank, 1717 St. James Place, Suite 500, Houston, TX 77056 and total approximately \$100,628.51.
7. The Texas Department of Banking (Department) regulates PFBCs under the authority of *Texas Finance Code* (Finance Code) Chapter 154.
8. The Texas Finance Commission has issued rules governing PFBCs, which are located primarily in 7 *Texas Administrative Code* (Administrative Code) Chapter 25.
9. The Cemetery is subject to an Emergency Order To Cease And Desist From Operating A Perpetual Care Cemetery Without A Valid Certificate Of Authority And From Violating Texas Health And Safety Code issued on September 13, 2016.

B. The Cemetery has failed to file an annual report

10. Pursuant to 7 Administrative Code § 25.13(a), a permit holder with outstanding PFBCs must file an Annual Report with the Department by March 1 of each year.
11. The Cemetery submitted an Annual Report on June 28, 2016, but it was incomplete and not accepted for filing.

12. On July 6, 2016, the Department gave the Cemetery written notice that the filing was deficient and directed the Cemetery to file the necessary documents by August 8, 2016.

The Cemetery did not do so.

13. As of the date of this order, the Cemetery has not filed a completed Annual Report or supplemented its incomplete June 28, 2016 submission, and therefore, remains in violation of 7 Administrative Code § 25.13(a).

B. There exists a threat of immediate and irreparable harm to a beneficiary under a prepaid funeral benefits contract.

14. There is currently a threat of immediate and irreparable harm to a beneficiary under a PFBC if the accounts holding prepaid funeral funds and the PFBC records are not seized by the Department. Without the records, the subsequent permit holder cannot determine who the beneficiary is or what goods and services they have paid for.

15. There exists a risk of loss of records because of the findings stated in the Emergency Cease and Desist Order referenced above issued against Respondents. Of those findings, the most notable include:

a. On August 10, 2016, Morales was indicted by the Dawson County Grand Jury on three counts of theft of funds Morales allegedly received for the purchase of markers at the Cemetery. On August 24, 2016, Morales was arrested and jailed in the Dawson County Jail.

b. On April 16, 2016, Devin Avant was arrested and charged with possession with intent to deliver cocaine in a drug free zone. At that time, Devin Avant was still under 10 years community supervision from a previous drug charge.

- c. The Department has received complaints related to markers not being delivered after funds were collected by the Cemetery.
 - d. On July 13, 2016, the 106th District Court of Dawson County, Texas issued an order committing Devin Avant to Concho Valley treatment center, a Court residential treatment facility in San Angelo, Texas, for a term up to 24 months.
 - e. On September, 9 2016, Brenda Avant informed the Department that the door to the cemetery has been “kicked down,” rendering the cemetery office insecure, and that the PFBC records are within the office.
16. In addition, the Department has reason to believe that Vela may have access to prepaid funeral benefit contract records, including those located in the Cemetery’s post office box.

II. Conclusions

17. Pursuant to Finance Code § 154.109(a)(1) the Commissioner may issue an order to cancel a PFB permit if he finds, by examination or other credible evidence, that the holder violated a law relating to the sale of PFBs or a rule adopted by the Texas Finance Commission.
18. The Commissioner is authorized by Finance Code § 154.4081(a) to issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC.
19. The Commissioner is authorized by Finance Code § 154.412(a) to issue an order seizing accounts in which prepaid funeral funds, including earnings, may be held and may issue an order to seize the records that relate to the sale of prepaid funeral benefits if the Commissioner finds by examination or other credible evidence that the person, among other things, was the subject of an order to cancel a PFBC permit.

20. As with other types of orders, the Commissioner is authorized by Finance Code § 154.412(c) to cause a seizure order to take immediate effect if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC.

21. The Commissioner finds that there is sufficient cause for the issuance of an order to cancel the Cemetery's permit to hold and administer PFBCs and to seize PFBC records and accounts under Finance Code § 154.412.

22. Paragraphs 14, 15, and 16 establish that immediate and irreparable harm is threatened and that there is sufficient cause for the issuance of this order with immediate effect.

III. Order

In accordance with Finance Code § 154.109, it is hereby ORDERED that the Cemetery's permit to hold and administer prepaid funeral benefit contracts is canceled.

In accordance with Finance Code § 154.412, it is hereby further ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of the contracts and other records of the Cemetery that relate to the sale of prepaid funeral benefits, wherever they may be located, held, or found, including the Cemetery location at 1010 County Road 20, Lamesa, Texas 79331 and the Cemetery's post office box.

In accordance with Finance Code § 154.412, it is hereby further ORDERED that all funds located in account number xxxxxx7032 at Regions Bank, 1717 St. James Place, Suite 500, Houston, TX 77056 are hereby seized.

IV. Effective Dates

Pursuant to Finance Code § 154.4081(c) and § 154.412(c-1), this Emergency Order to Cancel Permit to Hold and Administer Prepaid Funeral Benefit Contracts and to Seize Prepaid Funeral Funds and Records takes effect at the time and date of signing, as indicated below. The order remains in effect unless stayed by the Commissioner.

V. Right to hearing

Pursuant to Finance Code § 154.4081(c) and § 154.412(c-1) Respondents may request in writing, not later than the 30th day after the date the order is hand-delivered or the order is mailed, whichever date is earlier, a hearing to show that the emergency order should be stayed.

Signed on this 13th day of September, 2016 at 9:21 a.m.

/s/ Stephanie Newberg for
Charles G. Cooper
Texas Banking Commissioner

Certificate of Service

This Order is served as follows:

Mr. Jose Morales
Mr. Devin Avant
Lamesa Memorial Park LLC
P.O. Box 805
Lamesa, Texas 79331

by certified mail, return receipt requested and first class mail, sent on September 13, 2016.

Mr. Jose Morales
c/o Dawson County Sheriff
Kent Parchman
P.O. Box 1268
Lamesa, Texas 79331-1268
Fax: 806-872-9396

by certified mail, return receipt requested, first class mail, and facsimile transmission sent on September 13, 2016.

Mr. Devin Avant
Concho Valley Male Community Corrections Facility
3262 N. Hwy 277
San Angelo, Texas 76905

by certified mail, return receipt requested and first class mail, sent on September 13, 2016.

Ms. Brenda Avant
108 ½ North 22nd Place
Lamesa, Texas 79331

by certified mail, return receipt requested and first class mail, sent on September 13, 2016.

Ms. Michelle Vela
1505 North Second
Lamesa, Texas 79331

by certified mail, return receipt requested and first class mail, sent on September 13, 2016.

Colin Ramsey
Regions Bank
1717 St. James Place, Suite 500
Houston, Texas 77056
Colin.ramsey@regions.com

by certified mail, return receipt requested, first class mail, and email sent on September 13, 2016.

/s/ Deborah Loomis
Deborah Loomis
Deputy General Counsel
Texas Department of Banking