

**ORDER NO. 2019-024**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE THE BANKING</b>
	§	
<b>CREISHA LEWIS COTTON,</b>	§	
<b>INDIVIDUALLY</b>	§	
	§	
<b>and</b>	§	
	§	
<b>CLARENCE W. LEWIS, SR.,</b>	§	
<b>INDIVIDUALLY</b>	§	
	§	
<b>and as</b>	§	<b>COMMISSIONER OF TEXAS</b>
	§	
<b>OWNER AND FUNERAL DIRECTOR</b>	§	
<b>IN CHARGE OF CLARENCE LEWIS &amp;</b>	§	
<b>SON MORTUARY</b>	§	
	§	
<b>and</b>	§	
	§	
<b>CLARENCE LEWIS &amp; SON MORTUARY</b>	§	
	§	
<b>CONROE, TEXAS</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**CONSENT ORDER**

On this day, the matter of Creisha Lewis Cotton, Clarence W. Lewis, Sr. and Clarence Lewis & Son Mortuary (Respondents), located in Conroe, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Per the Texas Funeral Service Commission (TFSC), Clarence Lewis & Son Mortuary is a licensed funeral establishment (license number 885). TFSC records show that Clarence W. Lewis, Sr. is the owner of the establishment and funeral director in charge. TFSC records also show that Mr. Lewis was a licensed funeral director (license number 5735), but his license expired on December 31, 2018.
2. Per the Texas Department of Insurance (TDI), Creisha Lewis Cotton, office administrator for the Clarence Lewis & Son Mortuary, is a licensed pre-need agent for insurance-funded contracts (license number 2271158).

3. The Texas Department of Banking (Department) has jurisdiction over Respondents and the subject matter of this proceeding pursuant to Texas Finance Code (Finance Code) Chapter 154. The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to Finance Code §§ 154.406.
4. Respondents have been properly notified of their right to an administrative hearing under Finance Code Chapter 154 (Chapter 154).
5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 154.101, 154.151, 154.203, 154.253, 154.406, 154.4061 and 154.411.
6. Any violation of this Order could subject Respondents to additional regulatory or enforcement actions authorized by Chapter 154 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Texas Finance Commission (Finance Commission) under Chapter 154 or other applicable law.
7. Nothing in this Order diminishes the regulatory enforcement powers of the TFSC or the TDI.
8. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
  - a. service upon Respondents of this Order;
  - b. the right to present defenses to the allegations in this proceeding;
  - c. notice and hearing prior to imposition of this Order;
  - 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 Finance Commission; and
  - h. judicial review of this Order as provided by Texas Government Code § 2001.171 et seq., and any other challenge to the validity of this Order.

9. Respondents and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondents admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondents that Chapter 154 or a rule adopted, or order issued under Chapter 154 has been violated.
10. The Commissioner has considered this matter and finds as follows:
- a. On December 27, 2018, the Department received a consumer complaint regarding a prepaid funeral benefits contract (Contract) sold by Respondents to J. A. D.,<sup>1</sup> the complainant's sister, for \$5,085.
  - b. Upon researching the complaint, the Department determined that Respondents do not hold and have never held a permit to sell prepaid funeral benefits, or accept money for prepaid benefits, in the State of Texas as required by Texas Finance Code § 154.101. Moreover, the Contract sold to J. A. D. by Respondents was not written on an approved form as required by Finance Code § 154.151.
  - c. On December 28, 2018, February 12, 2019 and March 14, 2019 the Department sent Respondents letters via first class mail and certified mail, return receipt requested, to the Clarence Lewis & Son Mortuary at 500 S. 5th Street, Conroe, Texas 77301. The letters informed Respondents that, since they did not possess a valid permit to sell prepaid funeral services, the Contract sold to J. A. D. was illegal. In addition, the letters informed Respondents that they did not use an approved form for the Contract as required by Finance Code § 154.151, and failed to provide proof that an insurance-funded contract was issued for J. A. D. Finally, the letters informed Respondents that they:

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<sup>1</sup> Initials are used here and throughout the remainder of this Consent Order to maintain privacy.

- i. must immediately cease and desist from writing any new prepaid funeral benefits contracts or accepting related funds;
  - ii. must send the Department copies of all similar contracts along with an itemization of funds received related to those contracts;
  - iii. must send the Department a cashier's check or money order payable to J. A. D. in the amount of \$5,085; and
  - iv. are subject to an administrative penalty of up to \$1,000 per day under Finance Code § 154.406.
- d. The certified letters were unclaimed, but the letters sent via first class mail were not returned by the post office. Respondents did not reply to any of the letters, provide any information to the Department or issue a refund to J. A. D.
- e. On January 29, 2019, a Department examiner spoke with Ms. Cotton regarding the illegal Contract. Ms. Cotton had prepared and signed receipt number 1578 showing \$5,085 received from J. A. D. with no remaining balance due. Ms. Cotton stated that she had a permit to sell contracts with prepaid funeral benefits and would email her permit information to the Department.
- f. On February 5, 2019, Ms. Cotton emailed the Department a letter from the TDI confirming her license as a pre-need agent for insurance-funded contracts. However, Ms. Cotton did not provide proof that an insurance-funded contract was issued for J. A. D.
- g. On April 3, 2019, the Texas Banking Commissioner, Charles G. Cooper, issued an Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records (Emergency Order), which prohibits Respondents from selling any prepaid funeral benefits contracts or accepting related funds. The Emergency Order was served on Respondents in

person and by first class mail and certified mail, return receipt requested, to the Clarence Lewis & Son Mortuary at 500 S. 5th Street, Conroe, Texas 77301.

- h. Upon personal service of the Emergency Order, Respondents denied having any records related to prepaid funeral benefits contracts, including the Contract sold to J. A. D. Clarence W. Lewis, Jr., the son of the owner, stated he would provide the Department with bank statements by April 15, 2019 and a cashier's check by April 29, 2019. As explained in the Emergency Order, Respondents did not request a hearing to show that the Emergency Order should be stayed. No bank statements have ever been provided to the Department.
- i. On April 29, 2019, the Department received a cashier's check in the amount of \$500 made payable to J. A. D.'s sister-in-law and the TX MH MRA. On May 3, 2019, the Department returned the cashier's check to Respondents via Federal Express and instructed Respondents to re-issue the check made payable to J. A. D. Respondents signed for the Federal Express envelope containing the improper check, but never provided the Department with a proper replacement check.
- j. On May 2, 2019 and May 3, 2019, the Department asked Respondents to provide a schedule for when they would make complete payment to J. A. D. Respondents never provided the requested schedule.
- k. Pursuant to Finance Code Chapter 154, a person must hold a permit to sell prepaid funeral benefits contracts or must be a licensed insurance agent who forwards the funds received to the insurance company. Specifically:
  - i. under Finance Code § 154.101, a person must hold a permit to sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract, and

- ii. under Finance Code § 154.203, the premiums for an insurance policy that funds a prepaid funeral benefits contract may only be collected by a licensed insurance agent appointed by the insurance company issuing the policy and shall be paid to the insurance company in accordance with the agency agreement between the insurance company and the agent.
- l. Respondents sold the Contract to J. A. D. and accepted money for it without a permit and without forwarding the funds to an insurance company. Therefore, Respondents violated Finance Code §§ 154.101 and 154.203.
- m. Under Finance Code § 154.411, the Commissioner may issue an order to a person requiring restitution if the Commissioner finds that the person:
  - i. failed to deposit money in accordance with Finance Code §§ 154.251-154.265; or
  - ii. misappropriated, converted or illegally withheld money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract.
- n. Because Respondents took funds from J. A. D. and never deposited them in accordance with Finance Code § 154.253 or forwarded them to an insurance company in accordance with Finance Code § 154.203, the Commissioner finds that restitution in the amount of \$5,085 is warranted.
- o. Pursuant to Finance Code § 154.406, the Commissioner may impose an administrative penalty on a person who violates Chapter 154 or a final order of the Commissioner.
- p. As required by Finance Code § 154.406(c), the Commissioner has considered the seriousness of the violations, Respondents' compliance history, and Respondents' good faith in attempting to comply with Chapter 154. Based on Respondents' willful disregard of the Department's repeated requests that they reimburse J. A. D. for the illegal Contract

and provide other information to the Department, the Commissioner finds that Respondents have displayed bad faith in attempting to comply with Chapter 154. In addition, the Commissioner finds that, since Respondents were not licensed at the time of the violation, there is evidence of a serious violation.

- q. Based on these findings, the Commissioner finds that a penalty of \$4,000 is appropriate. However, if the \$5,085 in restitution is paid in full no later than April 15, 2020, then the Commissioner finds that a reduced penalty of \$2,000 is appropriate.

11. Respondents have agreed to comply with the terms that are set out in the Order below.
12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Respondents that come to the attention of the Department. However, nothing herein shall be construed to limit Respondents' right to contest any future finding or determination of non-compliance.

### **ORDER**

It is hereby ORDERED, ADJUDGED and DECREED that:

13. Within 30 days of the effective date of this Order, Respondents will cause to be delivered to the Department a cashier's check made payable to J. A. D.<sup>2</sup> in the amount of \$565 as the first installment of restitution. On or before the 15<sup>th</sup> day of each subsequent month beginning on September 15, 2019, Respondents will cause to be delivered to the Department a cashier's check made payable to J. A. D. in the amount of \$565 with the last payment being due no later than April 15, 2020.
14. No later than May 15, 2020, Respondents will cause to be delivered to the Department a cashier's check made payable to the Texas Department of Banking in the amount of \$500 as

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<sup>2</sup> Initials are used in paragraph 13 of this Consent Order to maintain privacy, but all checks described in paragraph 13 shall be made payable to the full name of the purchaser.

the first installment of the reduced penalty. On or before the 15th day of each subsequent month beginning on June 15, 2020, Respondents will cause to be delivered to the Department a cashier's check made payable to the Texas Department of Banking in the amount of \$500 with the last payment being due no later than August 15, 2020.

15. If J. A. D. dies before the full amount of restitution is paid, Respondents will honor the Contract sold to J. A. D. at no additional cost. Within ten days of honoring the Contract, Respondents will provide the Department with a pre-need to at-need reconciliation to verify that the goods and services included in the Contract were performed. Upon receipt and verification of the reconciliation, the Department will reduce the amount of Respondents' owed restitution by the amount of the honored Contract. The amount of the penalty shall not be further reduced by the performance of the Contract.

16. Failure to pay the minimum amount of restitution and penalty due within thirty days of any due date constitutes a violation of this Order. In the event of such a violation of this Order, any remaining restitution and any remaining penalty becomes immediately due.

#### **EFFECTIVE DATES**

This Order against Respondents is effective on the date signed by the Commissioner and is final and non-appealable as of that date. The provisions of this Order will remain effective and in force except in the event that, and until such time as, appropriate portions of this Order shall have been modified, terminated, suspended, or set aside in accordance with Finance Code §154.416 or other law.

It is so ORDERED.

Signed on this 15th day of July 2019.

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



**AGREED AND APPROVED AS TO FORM AND SUBSTANCE:**

/s/ Clarence W. Lewis, Sr.  
Clarence W. Lewis, Sr., Individually

July 11, 2019  
Date

/s/ Clarence W. Lewis, Sr.  
Clarence W. Lewis, Sr. as Owner and Funeral  
Director in Charge of Clarence Lewis & Son  
Mortuary

July 11, 2019  
Date

/s/ Creisha Lewis Cotton  
Creisha Lewis Cotton, Individually

July 11, 2019  
Date

**APPROVED AS TO FORM:**

/s/ Alice E. Geyer  
Alice E. Geyer  
Assistant General Counsel  
Texas Department of Banking

July 12, 2019  
Date