

ORDER NO. 2019-035

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
MARIA DE LA LUZ HERNANDEZ,	§	
INDIVIDUALLY	§	
	§	
and as	§	
	§	
OWNER AND FUNERAL DIRECTOR	§	COMMISSIONER OF TEXAS
IN CHARGE OF HERNANDEZ	§	
FUNERAL HOME, INC.	§	
	§	
and	§	
	§	
HERNANDEZ FUNERAL HOME, INC.	§	
	§	
ROSENBERG, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of Maria de la Luz Hernandez, individually and as Owner and Funeral Director in Charge of Hernandez Funeral Home, Inc., and Hernandez Funeral Home, Inc. (Respondents), of Rosenberg, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Hernandez Funeral Home, Inc. holds Permit Number 628 issued by the Texas Department of Banking (Department) to sell prepaid funeral benefits contracts (PFCs).
2. The 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), order restitution pursuant to Finance Code §154.411, and assess an administrative penalty pursuant to Finance Code §154.406.
3. Respondents have been properly notified of their right to an administrative hearing under Finance Code Chapter 154 (Chapter 154).

4. Respondents and the Commissioner agree to this Order solely for the purpose of this proceeding and without Respondents admitting to 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.
5. 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 Texas Finance Commission (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.
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 Finance Commission under Chapter 154 or other applicable law.
7. In January 2019, the Department commenced a routine examination of Respondents' records. During the examination, Department staff noted irregularities on the cancellations of three trust-funded PFCs. Further investigation by the Department in March 2019 revealed credible evidence to show that Respondents cancelled at least the three PFCs without the knowledge or consent of the purchasers, transferred the funds related to the PFCs from their trust account to

their operating account, and withdrew the funds from their operating account in cash without ever providing refunds to the purchasers.

8. On April 30, 2019, the Commissioner issued an Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Accounts and Records (Emergency Order) against Respondents pursuant to Finance Code §§154.4081 and 154.412(a).
9. Upon reviewing the accounts and records seized, the Department identified the trust-funded PFCs that had been previously reported to be cancelled by the purchasers. To verify proper authorizations of the cancellations, on May 15, 2019, the Department mailed letters to the purchasers of the 80 PFCs reported to be cancelled. The letters requested that the purchasers contact the Department in writing if they did not cancel their PFC.
10. As of June 26, 2019, the Department had received responses from 15 purchasers who stated that they did not cancel their PFC or receive a refund. In addition, the Department received responses from four purchasers who stated that they did not cancel their PFC, but the beneficiary of the PFC died, and despite the unauthorized cancellation, Respondents performed the funeral service as promised under the PFC. Finally, the Department received a response from one purchaser who stated that she did not cancel her PFC but, after contacting Respondents multiple times, received a refund on July 2, 2019. Therefore, from the 80 letters mailed, the Department identified 20 trust-funded PFCs that were improperly cancelled.
11. Pursuant to Finance Code §154.4081, Respondents were given 30 days from the delivery of the Emergency Order to request a hearing on the matter. On May 28, 2019, Respondents requested a hearing to show why the Emergency Order should be stayed. The hearing was set for June 18, 2019. Respondents then requested a continuance of the hearing to allow Ms. Hernandez, who requires the full-time assistance of a caregiver, to attend the hearing. The

hearing was rescheduled for July 23, 2019. However, the day before the hearing on July 22, 2019, the Department received a call from newly-hired counsel for Respondents, who requested an additional continuance for the purpose of reviewing the case. Once again, the hearing was rescheduled, this time for August 6, 2019. On August 1, 2019, the Department received a letter from Respondents' counsel requesting that the hearing be cancelled and stating that it was Respondents' intention to negotiate a settlement with the Department. The hearing was dismissed without prejudice on August 5, 2019.

12. On August 19, 2019, Respondents engaged a CPA to begin reviewing their records to identify the PFCs cancelled fraudulently. Due to the volume of cancellations and the range of dates for the cancellations (2006 through 2018), Respondents' attempts to trace funds through their operating account were time consuming and yielded no results. Thus, on September 2, 2019, Respondents' counsel mailed letters to the purchasers of the 60 cancellations requesting that they contact Respondents' counsel if they did not cancel their PFC. As of October 4, 2019, Respondents had received one additional response from a purchaser who stated that he did not cancel the PFC or receive a refund. Thus, the number of trust-funded PFCs that were improperly cancelled by Respondents totals 21.

13. Pursuant to Finance Code §154.411, the Commissioner has considered the matter and finds by credible evidence that Respondents misappropriated, converted, or illegally withheld or failed or refused to pay on demand money belonging to beneficiaries under PFCs. As outlined above, there were 16 trust-funded PFCs that were improperly cancelled, and for which no funeral services were performed, or refunds made. Those PFCs totaled \$50,711.51. Therefore, the Commissioner has determined that restitution in the amount of \$50,711.51 is warranted.

14. Pursuant to Finance Code §154.406, the Commissioner finds by credible evidence that Respondents violated Chapter 154 by cancelling PFCs without the proper authorizations. Pursuant to Finance Code §154.406(c) the Commissioner has considered the seriousness of the violation, Respondents' history of violations, and Respondents' good faith in attempting to comply with Chapter 154. The Commissioner finds that Respondents' violations were serious because the purchasers of the improperly cancelled PFCs were subject to financial harm and it is therefore appropriate for Respondents to pay a penalty in the amount of \$21,000, which equals \$1,000 per trust-funded PFC that was cancelled without appropriate authorization.
15. Pursuant to Finance Code §154.109, the Commissioner by order may cancel or suspend a permit if the Commissioner finds, by examination or other credible evidence, that the permit holder violated this chapter or another law of this state relating to the sale of prepaid funeral benefits. As explained above, the Commissioner finds by credible evidence that Respondents violated Chapter 154. Therefore, the Commissioner finds that is appropriate to cancel Respondents' permit to sell PFCs.
16. 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. In addition, nothing herein will 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:

17. Permit Number 628 is cancelled.
18. Respondents agree to pay \$50,711.51 in restitution according to the following terms:

- a. Within ten days of the of this Order, 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 \$5,111.51 as an initial payment for restitution.
 - b. Respondents will make additional payments for restitution of at least \$1,900.00 each month for 24 months following the effective date of this Order until the total amount of the remaining restitution of \$45,600.00 has been paid.
 - c. These additional restitution payments will be due to the Department by the 20th of each month and shall be made payable to the Texas Department of Banking. These payments represent the minimum amounts due. Respondents may make greater or more frequent payments.
 - d. Failure to pay the minimum amount due within 30 days of any due date constitutes a violation of this Order. In the event of such a violation of this Order, all remaining restitution and the penalty amount become immediately due.
19. Respondents agree to pay a penalty of \$21,000, which may be decreased if Respondents complete payment of the restitution required in paragraph 18 in less than the prescribed time. The penalty shall only be due after all restitution is paid.
- a. **Payment Within 12 Months:** If Respondents complete payment of all restitution within 12 months of the effective date of this Order, then the penalty shall be reduced to \$10,500 and must be paid within one year.
 - b. **Payment Within 18 Months:** If Respondents complete payment of all restitution within 18 months of the effective date of this Order, then the penalty shall be reduced to \$15,750 and must be paid within one year.

- c. If payment of all restitution is not completed within 18 months, then the penalty shall remain at \$21,000 and must be paid within one year.
 - d. The penalty shall be paid in equal monthly installments beginning 30 days after the final restitution payment is made and the remaining payments will be due to the Department by the 20th of each month until the full amount of the penalty is paid. Respondents may make greater or more frequent payments.
20. If any payment due and payable under this Order is not paid within 30 days of the due date, then this matter will be referred to the Office of the Attorney General for collection. The Office of the Attorney General shall pursue collection of any remaining restitution and penalty amounts less any payments made by Respondents and documented in accordance with paragraphs 18 or 19 above.
21. After the effective date of this Order, if any additional improperly cancelled trust-funded PFCs are identified, Respondents will be required to pay the Department additional restitution and administrative penalties for such cancellations.

EFFECTIVE DATE

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 are modified, terminated, suspended or set aside in accordance with applicable law.

It is so ORDERED.

Signed on this 6th day of December, 2019.

/s/ Charles G. Cooper

Charles G. Cooper
Banking Commissioner of Texas

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Maria de la Luz Hernandez
Maria de la Luz Hernandez, Individually

11-27-2019
Date

/s/ Maria de la Luz Hernandez
Maria de la Luz Hernandez as Owner and Funeral
Director in Charge of Hernandez Funeral Home, Inc.

11-27-2019
Date

APPROVED AS TO FORM:

/s/ Eleanor Curry
Eleanor Curry
Attorney for Respondents

11-27-2019
Date

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

12-3-2019
Date