

ORDER NO. 2019-13

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
CLARENCE LEWIS & SON	§	
MORTUARY	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
CLARENCE W. LEWIS, SR.	§	
CREISHA LEWIS COTTON	§	
	§	
CONROE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**EMERGENCY ORDER TO CEASE AND DESIST ACTIVITY AND TO SEIZE
PREPAID FUNERAL RECORDS**

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

I. Findings of Fact

1. On December 27, 2018, the Texas Department of Banking (“Department”) received a consumer complaint regarding a prepaid funeral benefits contract sold by Respondents to J. A. D.¹ for \$5,085.
2. Upon researching the complaint, the Department determined that Respondents do not hold 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 prepaid funeral benefits contract sold to J. A. D. by Respondents was not written on an approved form as required by Texas Finance Code § 154.151.

¹ Initials, as used here and continuing throughout the remainder of this Emergency Order, are used to preserve privacy.

3. Per the Texas Funeral Service Commission (“TFSC”), Clarence Lewis & Son Mortuary is a licensed funeral establishment (license number 885) and Clarence Lewis, Jr. is a licensed funeral director (license number 8915). 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. Per the Texas Department of Insurance, Creisha Lewis Cotton, office administrator for the mortuary, is a licensed pre-need agent for insurance-funded contracts (license number 2271158).
4. On December 28, 2018, the Department sent Respondents a letter via certified mail and regular mail with a response due date of January 18, 2019. The letter informed Respondents that, since they did not possess a valid permit to sell prepaid funeral services, they had illegally sold a prepaid funeral benefits contract to J. A. D. The letter also informed Respondents that they:
 - a. must immediately cease and desist from writing any new contracts with prepaid funeral benefits or accepting related funds;
 - b. must send the Department copies of all similar contracts along with an itemization of funds received related to those contracts;
 - c. must send the Department a cashier’s check or money order payable to J. A. D. in the amount of \$5,085; and
 - d. are subject to an administrative penalty of up to \$1,000 per day under Texas Finance Code § 154.406.

The certified letter was unclaimed, but the letter sent via regular mail was not returned by the post office. Respondents did not reply or provide any information to the Department.

5. On January 29, 2019, Examiner Nate Short spoke with Ms. Cotton regarding the illegal contract. Ms. Cotton had prepared and signed receipt No. 1578 showing \$5,085 received from

J. A. D. for the illegal contract 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.

6. On February 5, 2019, Ms. Cotton emailed the Department a letter from the Texas Department of Insurance 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.
7. On February 12, 2019, the Department sent Respondents a second letter via certified mail and regular mail with a response due date of February 28, 2019. The letter informed Respondents that they did not use an approved form for the prepaid funeral benefits contract sold to J. A. D. as required by Texas Finance Code § 154.151, and that they had failed to provide proof that an insurance-funded contract was issued for J. A. D. In addition, the letter directed Respondents to provide the same information that was requested in the Department's December 28th letter. Once again, the certified letter was unclaimed, but the letter sent via regular mail was not returned by the post office. Respondents did not reply or provide any information to the Department.
8. On March 14, 2019, the Department sent Respondents a third letter via certified mail and regular mail with a response due date of March 29, 2019. The letter directed Respondents to provide the information that had been requested twice before and informed Respondents that if the information was not received in the Department by the due date, then the Department would initiate legal action. For the third time, the certified letter was unclaimed, but the letter sent via regular mail was not returned by the post office. Respondents did not reply or provide any information to the Department.

II. Conclusions of Law

1. The Commissioner is authorized by Texas Finance Code § 154.412(a) to issue an order seizing records that relate to the sale of prepaid funeral benefits if the Commissioner finds by examination or other credible evidence that the person does not hold a permit in accordance with Chapter 154.
2. The Commissioner is authorized by Texas Finance Code § 154.408(a) to issue a cease and desist order to a person if the Commissioner finds by examination or other credible evidence that the person has violated Texas Finance Code Chapter 154.
3. The Commissioner finds by credible evidence that Respondents do not hold a permit as required by Texas Finance Code Chapter 154.
4. The Commissioner finds that this violation constitutes sufficient cause for the issuance of an order to seize prepaid funeral records under Texas Finance Code § 154.412(a) and an order to cease and desist from selling contracts with prepaid funeral benefits under Texas Finance Code § 154.408(a).
5. The Commissioner is authorized by Texas Finance Code §§ 154.412(c) and 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 prepaid funeral benefits contract. For the reasons stated in the findings of fact, the Commissioner finds that such harm is threatened.

III. Order

In accordance with Texas Finance Code § 154.412(a) and (c), it is hereby ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of the contracts and other records of Respondents that relate to the unauthorized sale of prepaid funeral benefits, wherever they may be located, held or found, including the funeral home location at 500

S. Fifth St., Conroe, Texas 77301. In accordance with Texas Finance Code §§ 154.408(a) and 154.4081(a), Respondents are hereby ORDERED to immediately cease and desist from engaging in the solicitation or sale of any prepaid funeral benefits contracts and the acceptance of related funds unless acting under the authority of a valid permit issued by the Department pursuant to Texas Finance Code Chapter 154.

IV. Effective Date and Notice of Right to Hearing

Pursuant to Texas Finance Code §§ 154.412(c) and 154.4081(a), this Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records takes effect immediately. Under Texas Finance Code §§ 154.412(c-1) and 154.4081(c), Respondents have the right to request in writing an opportunity for a hearing to show that this Emergency Order should be stayed. The written request must be filed with the Commissioner not later than the 30th day after the date on which the Emergency Order is hand-delivered or mailed, whichever date is earlier.

V. Service

Pursuant to Texas Finance Code §§ 154.412(b) and 154.408(c), this Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records will be served on Respondents by first class mail and certified mail, return receipt requested, to the following individuals:

Clarence W. Lewis, Sr.
Clarence Lewis & Son Mortuary
500 S. Fifth St.
Conroe, Texas 77301

Creisha Lewis Cotton
Clarence Lewis & Son Mortuary
500 S. Fifth St.
Conroe, Texas 77301

Signed on this 3rd day of April 2019.

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