ORDER NO. 2013-026

IN THE MATTER OF:	§	**BEFORE:**
	§	
KEVIN KEENEY,	§	
INDIVIDUALLY AND AS OWNER,	§	
DIRECTOR, AND VICE PRESIDENT,	§	
HOWELL-DORAN	§	**THE BANKING COMMISSIONER**
FUNERAL HOME, INC.	§	**OF TEXAS**
	§	
AND	§	
	§	
HOWELL-DORAN FUNERAL	§	
HOME, INC.	§	
SAN SABA, TEXAS	§	**AUSTIN, TRAVIS COUNTY, TEXAS**

AGREED ORDER

On this day, the matter of Kevin Keeney, individually and as Director and Vice President of Howell-Doran Funeral Home, Inc., and Howell-Doran Funeral Home, Inc., San Saba, Texas (Respondents), was submitted to the Texas Banking Commissioner (Commissioner) for consideration and action. This matter concerns payment of restitution by and assessment of administrative penalties against Respondents relating to violations of Texas Finance Code Chapter 154 as described below. In lieu of the scheduled hearing, the Texas Department of Banking (Department) and Respondents wish to enter an agreement regarding the restitution, penalties, and other terms as provided in this Order.

1. Respondent and the Department jointly request the Commissioner to dispose of this matter pursuant to the provisions of Government Code §2001.056 by issuing this Agreed Order. Respondent and the Department stipulate to the facts stated here, and the parties agree to comply with the terms of this Agreed Order.
2. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Texas Finance Code Chapter 154 and Texas Government Code §§ 2001.171 et seq., and that the Commissioner has the authority to issue this Agreed Order under Texas Government Code §2001.056.
3. Respondent Kevin Keeney is Vice President, Director, and fifty percent owner of Howell-Doran Funeral Home, Inc., previously doing business as Howell-Doran Funeral Home in San Saba, Texas. Howell-Doran Funeral Home has closed and no longer

conducts business, though the corporation remains registered as an existing entity with the Texas Secretary of State.

4. Respondents do not currently hold the permit required by Texas Finance Code §154.101 to sell prepaid funeral contracts (PFCs). Respondent Howell-Doran Funeral Home formerly held permit number 272. On May 27, 2010, the Commissioner conditionally renewed Respondent's permit, authorizing Respondent to maintain existing trust-funded PFBCs only, prohibiting sale of any new trust-funded PFBCs. On June 1, 2011, Respondent's permit expired for failure to renew.
5. Respondent Kevin Keeney formerly held license number 277385, issued by the Texas Department of Insurance (TDI) to sell insurance as an agent of Homesteaders Life Company, a company authorized by the Texas Department of Banking (DOB) to sell insurance funded PFBCs under permit number 892. TDI license 277385 expired on April 1, 2010 for failure to renew.
6. On June 28, 2011, the Commissioner issued Order No. 2011-026, Emergency Order to Cease and Desist Activity, and to Seize Records and Funds. Order No. 2011-026 was based on findings that Respondents violated several sections of Texas Finance Code Chapter 154 with respect to three trust-funded PFCs and three insurance-funded PFCs. Specifically, the Commissioner found that Respondents had failed to properly handle payments received for these PFCs, and failed to maintain proper records relating to the PFCs. Order No. 2011-026 ordered Respondents to cease and desist all sales of PFCs, and authorized the Department to seize all prepaid funeral records and related trust funds. Respondents did not request a hearing as provided by Texas Finance Code § 154.4081(c) and § 154.412(c-1) in order to show that Order No. 2011-026 should be stayed. Order No. 2011-026 therefore remains in force.
7. Pursuant to Order No. 2011-026, the Department Seized Respondents' prepaid funeral records and related trust funds. After reviewing the seized records, the Department attempted to contact consumers based on information contained in the files. In many cases the Department received further information or documentation from purchasers of PFCs or their families. Additionally, following the seizure, the Department published a notice in a local newspaper regarding the seizure. Because of the notice, several people

contacted the Department regarding previously unreported contracts which were not contained in the seized records.

8. From the seized files and the documentation received from consumers, the Department identified 76 PFCs that were mishandled in violation of Finance Code Chapter 154 in some way. The mishandling of these contracts involved 218 distinct violations of Finance Code Chapter 154 as follows:
    a. 72 violations of §154.159, §154.160, and §154.253, for failing to properly deposit into trust all payments collected on trust-funded PFCs;
    b. 3 violations of §154.159 and §154.203, for failing to properly transmit to an insurance company premiums collected on insurance-funded PFCs;
    c. 16 violations of §154.101, for having sold PFCs after the Commissioner restricted the permit, prohibiting sale of PFCs;
    d. 61 violations of §154.264, for failing to maintain accounting records showing the amount deposited with respect to each PFC;
    e. 59 violations of §154.052, for failing to report PFCs; and
    f. 7 violations of §154.053, for failing to retain copies of PFCs.
9. Because Texas Finance Code Chapter 154, Subchapter I, (Texas Finance Code § 154.401 et seq.), renders the violations described in Paragraph 8 criminal offenses, the Department referred the matter to the San Saba County District Attorney on March 20, 2012. The District Attorney subsequently initiated a criminal suit against Respondent Kevin Keeney with respect to 62 PFCs. Ten of the PFCs involved in the criminal case were insurance-funded contracts that are not included in the 76 PFCs described in Paragraph 8. As a result, the criminal case only involved 52 of the 76 PFCs that the Department had identified as having been mishandled. Ultimately Mr. Keeney entered an agreed plea settlement with the District Attorney that resulted in an Order for Deferred Adjudication (Court Order) requiring payment of $155,026 in restitution. Because the administration of all seized PFCs will be handled by the Department, the terms of the Court Order require that Mr. Keeney make the restitution payments to the Department. Therefore this Agreed Order includes provisions that will govern the payment of the restitution that Mr. Keeney owes under the Court Order.

10. Because not all the mishandled PFCs that the Department identified were included in the criminal indictment, and therefore were not covered by the restitution ordered by the Court Order, additional restitution must still be paid. The Department calculated the total amount of principal funds that were required to be on deposit, subtracted the appropriate seized funds, accounted for five contracts that Respondents settled pursuant to civil suits as well as the amount stated in the Court Order, and determined that $16,603.21 of restitution must be paid in addition to the amount described in Paragraph 9. Respondents have had an opportunity to review the Department's materials and are satisfied that this amount is correct. As a result, the total amount of restitution to be paid is $171,629.21 (Final Restitution). The terms for payment of the Final Restitution are described in Paragraph 12 below.
11. In addition to restitution, the Commissioner has determined that given the nature of the violations of Finance Code Chapter 154 in this matter, an administrative penalty is appropriate. Finance Code §154.406 authorizes the Commissioner to assess administrative penalties, the amount of which may not exceed $1,000 per violation, per day the violation occurs. The parties agree that although the maximum amount authorized by the statute would be many times greater, the imposition of an administrative penalty against Respondent Kevin Keeney in the maximum amount of $75,000.00 is appropriate and reasonable given the nature of the violations cited in Paragraph 8. However, if certain conditions are met, the penalty may be decreased. The conditions and full payment terms are described in Paragraph 13 below.
12. Respondent agrees to pay the Final Restitution amount according to the following terms.
    a. Respondent shall pay a minimum of $12,000.00 per year, beginning from the date the Court Order was entered, August 15, 2013. Respondent may make this sum in any incremental payments he chooses so long as a total of at least $12,000 is paid on or before August 15 each year, except in the first year as provided in Paragraph 12(b) below.
    b. The first year will be prorated such that the minimum amount due on or before August 15, 2014 is $9,000.00.

c. Respondent shall pay the entire restitution amount within ten years from the date the Court Order was entered. All restitution must therefore be paid on or before August 15, 2023.

d. There is no penalty for paying more than the minimum annual amount or for paying the entire amount in fewer than ten years.

e. Respondent shall make all payments by money order or cashier check, payable to The Texas Department of Banking.

f. The Department acknowledges that Respondent Keeney may have already settled civil suits with consumers whose contracts contribute to the Final Restitution, or may have performed the services required by contracts calculated in the Final Restitution. As such, if at any time Respondent can demonstrate to the satisfaction of the Commissioner that he has settled or performed a PFC, or otherwise made the consumer whole such that restitution is no longer owed, the Department shall lower the amount of Final Restitution accordingly.

13. Respondent agrees to pay a maximum penalty of $75,000.00 that may be decreased based on how quickly Respondent completes payment of the total $171,629.21 of restitution. The final amount of the administrative penalty will be determined according to the following terms.

a. **Payment Within Four Years:** If Respondent completes payment of all restitution on or before August 15, 2017, the administrative penalty shall be $10,000.00.

b. **Payment Within Five Years:** If Respondent completes payment of all restitution after August 15, 2017, but on or before August 15, 2018, the administrative penalty shall be $20,000.00.

c. **Payment In More Than Five Years:** For every year after August 15, 2018 that it takes Respondent to complete payment of restitution, the administrative penalty shall increase by $11,000.00. Accordingly, if full payment of restitution is not completed until August 15, 2023, the administrative penalty shall be $75,000.00.

d. The administrative penalty will not be due until all restitution has been paid. Respondent shall pay the entire penalty amount by money order or cashier check within thirty days after the final restitution payment is made.

14. Any violation of the payment terms described in Paragraphs 12 and 13 constitute a violation of this Agreed Order. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas, or restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of law in future proceedings.
15. Respondents have been notified of the right to a hearing on the matter of administrative penalties under Finance Code §154.406, and on the matter of restitution under Finance Code §154.411.
16. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
    a. the right to challenge Order No. 2011-026 in any forum;
    b. service upon Respondents of this Agreed Order;
    c. notice and hearing prior to imposition of an administrative penalty;
    d. notice and hearing prior to an order of restitution; and
    e. review of this Agreed Order by the Texas Finance Commission, and judicial review of this Agreed Order as provided by Texas Government Code §§2001.171 et seq., and any other challenge to the validity of this Order.
17. Respondent and the Department agree to the legal conclusions, and terms and conditions of this Agreed Order.
18. If circumstances change such that the parties wish to change the terms to which they have agreed, including but not limited to the amount of penalty or restitution owed by Respondent, the Commissioner may amend this Agreed Order upon written agreement by the parties.
19. This Order is effective on the date signed by the Commissioner.

ORDER

WHEREFORE, based on the foregoing, the Commissioner **ORDERS** that this matter is resolved in accordance with the provisions listed above. It is further **ORDERED** that Order No. 2011-026 is final and unappealable, provided however that to the extent any conflict may exist between the provisions of this Agreed Order and Order No. 2011-026, this Agreed Order shall supersede the provisions of Order No. 2011-026.

Signed this 7th day of November, 2013.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/Kevin Keeney	11/5/13
Kevin Keeney	Date

State of Texas (
(
County of San Saba (

Sworn to and subscribed before me on the 5th day of November, 2013, by Kevin Keeney.

/s/Linda Whitney
Notary Public's signature

APPROVED AS TO FORM:

/s/Daniel Wood
Daniel Wood
Assistant General Counsel
Texas Department of Banking

11/5/13
Date

/s/Tracy D. Cluck
Tracy D. Cluck
Attorney for Respondent

11/5/13
Date