

ORDER NO. 2015-006

IN THE MATTER OF:	§	BEFORE:
	§	
SWCS, INC., d/b/a LAMESA	§	THE BANKING
MEMORIAL PARK,	§	COMMISSIONER OF TEXAS
	§	
LAMESA, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of SWCS, Inc., d/b/a Lamesa Memorial Park (SWCS) located in Lamesa, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. SWCS is a corporation located in the state of Texas, with its principal address listed as 6420 SW Blvd., Ste. 133, Fort Worth, Texas 76109. SWCS holds restricted Permit No. 1098 issued by the Texas Department of Banking (Department) to maintain its current prepaid funeral benefits contracts.
2. The Department has jurisdiction over SWCS 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.
3. SWCS has been properly notified of its right to an administrative hearing under Finance Code Chapter 154 (Chapter 154).
4. The statutory provisions at issue in this matter include Finance Code §§ 154.053, 154.054, 154.155(b) and 154.406 and Title 7 *Texas Administrative Code* (TAC) §§ 25.11(e)(4), 25.13 and 25.24.
5. Any violation of this Order could subject SWCS to additional regulatory or enforcement actions authorized by Chapter 154. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 154 or other applicable law.
6. For purposes of this proceeding, SWCS knowingly and voluntarily waives:
 - a. Service upon SWCS 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; 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.
7. SWCS agrees to this Order solely for the purpose of this proceeding, and without admitting or denying any violations of law or regulations. This Order does not constitute an admission by SWCS that Chapter 154 or a rule adopted or order issued under Chapter 154 has been violated.
8. The Commissioner has considered this matter and finds as follows:
- a. On May 27, 2014, the Department performed a limited scope of examination of SWCS with analysis as of March 31, 2014.
 - b. On June 23, 2014, the Department sent SWCS a copy of the March 31, 2014, Limited Scope Report of Examination (March 2014 ROE). The March 2014 ROE detailed SWCS' violations of the Finance Code and the TAC. In particular, the March 2014 ROE noted that SWCS was in violation of Title 7 TAC § 25.11(e)(4) for failing to maintain accurate and reconciled individual ledgers; Title 7 TAC § 25.13 for failing to file the 2013 Annual Report by the March 1, 2014 due date; Finance Code § 154.155(b) for failing to issue cancellation benefits within 30 days of receipt of the notice of cancellation; and Finance Code § 154.053 for failure to timely prepare the required records in order for the Department to perform the examination.
 - c. The June 23rd letter notified SWCS that immediately after correcting these violations, but no later than July 28, 2014, it must forward documentation regarding its correction efforts to the Department. Additionally, the letter attached a bill for \$3,072.66 for examination fees related to the limited scope of examination. The bill noted that the listed amount was due upon receipt of the fee statement.
 - d. On July 31, 2014, the Department sent SWCS a letter attaching the June 23, 2014 letter and informing it that the Department had not received a response to the deficiencies noted in the March 2014 ROE. Further, the letter told SWCS that the Department had not received a payment for the examination expenses.

- e. The July 31, 2014 letter also informed SWCS that based on the various violations of the Finance Code and the TAC, the Department is entitled to take various actions against SWCS under Chapter 154 of the Finance Code. These actions include:
 - i. imposing an administrative penalty of up to \$1,000 per day for each violation that is not corrected within thirty days of the permit holder's receipt of written notice of the violations from the Department;
 - ii. issuing a cease and desist order;
 - iii. suing for injunctive relief in district court;
 - iv. canceling, suspending or refusing to renew a permit; and
 - v. referring the case to the Attorney General of Texas for an action to forfeit the company's charter.

The letter emphasized that if the cited violations were not corrected by August 29, 2014, the matter could be referred to the Department's Legal Division.

- f. On September 11, 2014, the Department called SWCS to remind it about the delinquent items. Don Rathman, SWCS' president, stated that he would submit the responses to the March 2014 ROE to the Department by September 16, 2014. On that same day, the Department emailed SWCS to again inform them that the Department had not received SWCS' responses to the March 2014 ROE. The email cautioned that SWCS was required to submit a response immediately to avoid the matter being turned over to the Department's Legal Division.
- g. On September 26, 2014, the Department emailed SWCS regarding the March 2014 ROE response. The email noted SWCS' continuing non-compliance and stated that if a response was not submitted by September 30, 2014, the matter could be referred to the Department's Legal Division.
- h. On October 7, 2014, the Department sent a letter to SWCS concerning its violations. The letter attached the June 23rd and July 31st letters, and noted that the Department had not received a response to the March 2014 ROE or the examination fee due. The letter stated that since no written response was received after repeated requests, corrective action to violations cited in the March 2014 ROE would be reviewed at the next examination but stressed that the examination fee needed to be submitted immediately.

- i. On November 18, 2014, the Department sent a final letter to SWCS. The letter again noted that the Department had not received the examination expenses due. The letter cautioned that the failure to submit payment for the examination expenses by December 5, 2014 would result in a referral to the Department's Legal Division for the assessment of fines and penalties, in addition to other legal remedies which could be pursued against it.
- j. On February 13, 2015, over seven months after the March 2014 ROE and accompanying fee bill were mailed, SWCS paid the \$3,072.66 examination fee.
- k. Under Title 7 TAC § 25.11(e)(4), a permit holder must maintain individual ledgers for each contract purchaser, balanced at least quarterly to the control ledger and to the records of the trustee/depository in hard-copy form, or on microfiche or in an electronic database from which they may be reasonably retrieved in hard-copy form. As SWCS' internal records were inconsistent with its third-party record-keeper, Access Financial Group, SWCS violated Title 7 TAC § 25.11(e)(4).
- l. Pursuant to Title 7 TAC § 25.13, a permit holder with outstanding prepaid funeral benefit contracts must file an annual report with the Department by March 1st of each year for the preceding calendar year. Because SWCS did not submit the Annual Report and required documentation until May 28, 2014, nearly three months after the due date, it violated of Title 7 TAC § 25.13.
- m. Under Finance Code § 154.155(b), the seller of a trust-funded contract shall withdraw and pay to the purchaser money in the depository being held for the purchaser's use and benefit not later than the 30th day after the date of a cancellation notice. As SWCS cancelled two prepaid funeral contracts but had not issued a refund to the purchasers for at least 165 days after the cancellation, it violated Finance Code § 154.155(b).
- n. Pursuant to Finance Code § 154.053, a permit holder that has outstanding contracts for prepaid funeral benefits shall maintain records as required by rule of the commission. Because SWCS failed to timely prepare the required records in order for the Department to perform its examination, it violated Finance Code § 154.053.
- o. Under Finance Code § 154.054, the Commissioner shall impose on the seller a fee for each examination conducted based on the seller's total outstanding contracts. Title 7

- TAC § 25.24 mandates that the seller pay such examination fee to the Department to defray the cost of administering Finance Code §154.054. The rule specifies that if more than one examination is required by the Department within the same fiscal year, the permit holder must pay the fee upon receipt of the examination report. As SWCS did not pay the fee bill for the limited scope examination until over seven months after the March 2014 ROE was mailed, SWCS violated Title 7 TAC § 25.24.
- p. Pursuant to Finance Code § 154.406(a)(1), the Commissioner may impose an administrative penalty on a person who violates Chapter 154 or rule of the commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Department.
 - q. As a result of these violations, the Department issued a Notice of Hearing on January 22, 2015, Docket No. BF-1502-14-369(DW), to determine whether the Commissioner should assess administrative penalties for violations of the Finance Code and TAC. The hearing was set for February 18, 2015.
 - r. As required by Finance Code § 154.406(c), the Commissioner has considered the seriousness of the violation, SWCS' compliance history, and SWCS' good faith in attempting to comply with Chapter 154. The Commissioner finds that SWCS' extensive delay in responding to the Department's requests for payment of the examination fee of over seven months and complete lack of response to requests for correction of violations cited in the March 2014 ROE is evidence of an unsatisfactory compliance history and lack of good faith in attempting to comply with statutory requirements.
 - s. Based on these findings, the Commissioner finds a penalty of \$5,000.00 is appropriate.

Order

It is hereby ORDERED, ADJUDGED and DECREED that:

1. SWCS will have the violations noted in the March 2014 ROE corrected by the date of its next examination, currently scheduled for March 9, 2015.
2. SWCS will pay \$5,000.00 to the Department as an administrative penalty under Finance Code § 154.406 for failing to maintain accurate and reconciled individual ledgers; failing to file the 2013 Annual Report by the March 1, 2014 due date; failing to issue

cancellation benefits within 30 days of receipt of the notice of cancellation; failing to timely prepare the required records in order for the Department to perform the examination; and failing to timely submit the examination fee for the limited scope of examination performed as of March 31, 2014. The first \$1,000.00 of the penalty shall be due on the effective date of this Order. The remaining \$4,000.00 of the penalty shall be due in equal payments of \$800.00 by the last day of the subsequent five months, with the first payment due by March 31, 2015. This payment schedule will result in the penalty being paid in full by the last day of July 2015. If SWCS fails to make any payment required under this Consent Order to the Department, in addition to any other remedies specified herein, SWCS agrees to pay a penalty of \$1,000.00 for each late payment.

3. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by SWCS that come to the attention of the Department. However, nothing herein shall be construed to limit SWCS' right to contest any future finding or determination of non-compliance.

Effective Date

This Order against SWCS is effective on the date signed by the Commissioner, and subject to its terms, SWCS may not appeal.

Signed on this 6th day of March, 2015.

/s/ Charles G. Cooper

Charles G. Cooper
Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

SWCS, Inc., d/b/a Lamesa Memorial Park

By: /s/ Don Rathman

Don Rathman
President

Date: 03-05-2015

APPROVED AS TO FORM:

By: /s/ Stephanie Lowe

Stephanie Lowe

Assistant General Counsel
Texas Department of Banking

Date: 03-06-2015