

**ORDER NO. 2015-013**

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
BELINDA NEEL ALLEE	§	
	§	
and	§	COMMISSIONER OF TEXAS
	§	
JAMES R. ALLEE,	§	
	§	
CROCKETT, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**CONSENT ORDER**

On this day, the matter of Belinda Neel Allee (Belinda) and James R. (Randy) Allee (collectively, Respondents) located in Crockett, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Belinda and Randy were owners of Callaway-Allee Funeral Home (the Funeral Home) in Crockett, Texas from 1981 until July 22, 2013, when they sold the Funeral Home to Callaway-Allee Holdings, LLC. The Funeral Home was subsequently sold to James Allee II (Jamie), Belinda’s and Randy’s son, on October 20, 2014.
2. Belinda held a license from the Texas Department of Insurance (TDI) to sell pre-need insurance benefits that expired on August 6, 2014. As of the date of this Order, she has not renewed her license. For many years, until her appointment was terminated in 2013, Belinda was an agent for Forethought Life Insurance Company (Forethought), a company that funds prepaid funeral benefits contracts (PFBCs) issued by Forelife Agency, Inc. (Forelife). Forelife holds Prepaid Funeral Benefits Permit No. 858, issued by the Texas Department of Banking (DOB) under Chapter 154.
3. Randy holds a funeral director license from the Texas Funeral Service Commission under License No. 6576. Randy has been the Funeral Director in Charge of the Funeral Home.
4. The DOB has jurisdiction over Respondents and the subject matter of this proceeding pursuant to *Texas Finance Code* (Finance Code) § 154.051. The Commissioner has authority to issue this Order and to assess administrative penalties pursuant to Finance Code §§154.406 and 154.4061.
5. Respondents have been properly notified regarding their right to an administrative hearing under Finance Code Chapter 154 (Chapter 154) and are represented by legal counsel.

6. Any violation of this Order could subject Respondents to additional regulatory or enforcement actions authorized by Finance Code §§ 154.406 to 154.415 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the DOB, the Commissioner, or the Finance Commission of Texas under Chapter 154 or other applicable law.
7. Nothing in this Order diminishes the regulatory enforcement powers of the Texas Department of Insurance or the Texas Funeral Services Commission.
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 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.
9. Respondents agree to disposition of this matter pursuant to the provisions of *Texas Government Code* § 2001.056.
10. Respondents agree 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 Respondents that Chapter 154 or a rule adopted or issued under Chapter 154 has been violated.
11. The Commissioner has considered the matter and finds as follows:
  - a. In 2013, the DOB became aware that Belinda and Randy had submitted an unusually large amount of insurance applications to Forethought to issue insurance policies to fund PFBCs. The DOB commenced an investigation and determined that Belinda and Randy received funds for numerous PFBCs from the purchasers, and did not timely transmit those funds to Forethought. Instead, Belinda and Randy misapplied those funds.

- b. The DOB issued subpoenas to Belinda, Randy, and Callaway-Allee Holdings, LLC and received voluminous records evidencing Belinda's and Randy's misapplication of the purchasers' funds for 60 PFBCs. The subpoenas compelled Belinda, Randy, and Callaway-Allee Holdings, LLC to produce "[a]ll prepaid funeral benefits contracts with Callaway-Allee Funeral Home as the provider, whether written on a prepaid funeral benefits contract form or otherwise, for which the funds were not handled properly under Finance Code §§ 154.159 and/or 154.203 ...." For each contract response to that request, the subpoena also compelled Belinda, Randy, and Callaway-Allee Holdings, LLC to produce:
- i. All records of customer payments for pre-need contracts, including copies of checks, records of credit card payments, and receipts given by the funeral home to customers;
  - ii. All funeral home payments for pre-need contracts made to an insurance company, including copies of checks;
  - iii. All applications for insurance policies; and
  - iv. The signed at-need contract and death certificate for contracts that have already matured.
- c. When providing their responses to the subpoenas, Belinda and Randy signed affidavits in which they swore that "[t]he attached records are copies of all the records in my possession, custody, or under my control that are responsive to this subpoena."
- d. Based on the evidence of Belinda's and Randy's misapplication of the purchasers' funds for 60 PFBCs, the Commissioner issued a Consent Order, Order No. 2014-016, (the Consent Order) on September 11, 2014.
- e. The Consent Order detailed the specifics of the mishandled 60 PFBCs and found that Belinda and Randy misappropriated PFBC funds totaling \$380,270.30 over an almost fifteen-year period in violation of Finance Code § 154.203. As a result, among other things Belinda and Randy were prohibited from participating in the business of prepaid funeral benefits sales and from engaging in activities in violation of Chapter 154. The Consent Order specifically stated that it "does not restrict the [DOB] with respect to any enforcement action or other recourse regarding any past, current, or future violations by [Belinda and Randy] that come to the attention of the [DOB]."

- f. Subsequently, in October 2014, the DOB became aware that Belinda and Randy withheld evidence of misappropriation of funds from additional PFBCs, outside of the 60 that were identified in the Consent Order. The DOB commenced an investigation and determined that:
- i. On June 24, 1994, Belinda sold prepaid funeral benefits to DB<sup>1</sup> for \$6,162.00. Belinda and Randy received the funds from DB on or around that time but did not remit the funds to Forethought for issuance of DB's insurance policy. Rather, in 2014, the funds were remitted, along with new paperwork, to FDLIC for issuance of DB's policy.
  - ii. On June 24, 1994, Belinda sold prepaid funeral benefits to BB for \$6,375.00. Belinda and Randy received the funds from BB on or around that time but did not remit the funds to Forethought for issuance of BB's insurance policy. Rather, in 2014, the funds were remitted, along with new paperwork, to FDLIC for issuance of BB's policy.
- g. Based on the misappropriation of prepaid benefit funds and at least two intentional violations of subpoenas and the Consent Order, the Commissioner found that immediate or irreparable harm was threatened to the public or a beneficiary under a PFBC. As a result, an Emergency Order to Seize Prepaid Funeral Records (Emergency Order), Order No. 2014-021, was issued against Respondents and Jamie and became effective on October 23, 2014. Neither Respondents nor Jamie appealed or requested a hearing on the Emergency Order.
- h. The evidence the DOB obtained through the Emergency Order revealed further funds misappropriation by Respondents. In particular, the DOB determined that:
- i. On July 26, 2013, Respondents remitted funds to Forethought for issuance of a prepaid funeral benefits (PFBs) policy for PC. On or around February 20, 2014, Respondents sold additional PFBs to PC for \$1,000.00. Respondents received the additional funds from PC on or around that time, but did not remit the funds to Forethought for issuance of PC's new policy.

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<sup>1</sup> Initials, as used here and continuing throughout the remainder of this Order, are used to preserve privacy.

- ii. On or around February 9, 2006, Respondents sold PFBs to MB for \$150.00. Respondents received the funds from MB on or around that time, but did not remit the funds to Forethought for issuance of MB's policy.
  - iii. In 2008 or 2009, Belinda sold prepaid funeral benefits to CA for \$7,074.00. Belinda and Randy received the funds from CA on or around that time but did not remit the funds to Forethought for issuance of CA's insurance policy. Rather, on August 12, 2014, the funds were remitted, along with new paperwork, to FDLIC for issuance of CA's policy.
  - iv. On or around May 4, 2009, Respondents sold PFBs to LR for \$1,235.00. Respondents received the funds from LR on or around that time, but did not remit the funds to Forethought for issuance of LR's policy.
  - v. On or around September 22, 2010, Respondents sold PFBs to VR for \$592.00. Respondents received the funds from VR on or around that time, but did not remit the funds to Forethought for issuance of VR's policy.
  - vi. On or around April 18, 2013, Respondents sold PFBs to LG for the benefit of LG for \$3,000.00. Respondents received the funds from LG on or around that time, but did not remit the funds to Forethought for issuance of LG's policy.
  - vii. On or around April 26, 2013, Respondents sold PFBs to JP for the benefit of VP for \$9,558.00. Respondent received the funds from JP on or around that time, but did not remit the funds to Forethought for issuance of VP's policy.
  - viii. On or around August 12, 2013, Respondents sold PFBs to AH for \$500.00. Respondents received the funds from AH on or around that time, but did not remit the funds to Forethought for issuance of AH's policy.
12. Beyond the over \$380,000.00 of funds that Belinda and Randy were found in the previous Consent Order to have misappropriated, Respondents misappropriated additional PFBC funds totaling \$35,646.00 in violation of Finance Code § 154.203. This statute requires agents to pay funds to the insurance company in accordance with their agency agreement with the insurance company. In committing such violations and not turning over the contracts to the DOB, Respondents intentionally violated the subpoena.
13. As required by Finance Code § 154.406, the Commissioner considered the seriousness of the violations, Respondents' history of violations, and Respondents' good faith in

attempting to comply with Chapter 154. The Commissioner finds that Respondents' repeated history of violations and conscious effort to conceal additional violations are evidence of a long history of serious violations and Respondents' bad faith.

14. The Commissioner additionally finds that the matters recited in the foregoing two paragraphs establish that Respondents have demonstrated a pattern of willful disregard for the requirements of Chapter 154, and the rules of the Finance Commission so that the maximum administrative penalty permitted under Section 154.406 is justified.

### **ORDER**

It is therefore, ORDERED, ADJUDGED and DECREED that:

1. Respondents shall not engage in activities in violation of Chapter 154 and shall take all actions necessary to comply with the requirements of Chapter 154.
2. Respondents will pay \$35,000.00 to the DOB as an administrative penalty under Finance Code § 154.406 for misappropriating PFBC funds and failing to transmit the funds and associated PFBC paperwork to the insurance company under Finance Code § 154.203. The penalty shall be payable to the DOB within 15 days of the effective date of this Order.
3. Respondents are jointly and severally liable for the payment of the penalty.
4. This Order does not restrict the DOB with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondents that come to the attention of the DOB. However, nothing herein shall be construed to limit Respondents' right to contest any future finding or determination of non-compliance.

### **EFFECTIVE DATES**

This Order against Respondents is effective on the date signed by the Commissioner and is final and nonappealable 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 19th day of May, 2015.

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

AGREED AS TO FORM AND SUBSTANCE:

/s/ Belinda Neel Allee  
Belinda Neel Allee

Date: May 14, 2015

/s/ James R. (Randy) Allee  
James R. (Randy) Allee

Date: May 14, 2015

APPROVED AS TO FORM:

/s/ Kergin Bedell  
Kergin Bedell  
Attorney for Belinda Neel Allee and James R. Allee

Date: May 15, 2015

/s/ Stephanie Lowe  
Stephanie Lowe  
Assistant General Counsel  
Texas Department of Banking

Date: May 19, 2015