

Order No. 2018-008

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
FORESTHAVEN CEMETERY CORPORATION	§	
	§	
SUGAR LAND, TEXAS	§	COMMISSIONER OF TEXAS
	§	
(CERTIFICATE OF AUTHORITY NO. 83)	§	
	§	AUSTIN, TRAVIS COUNTY, TEXAS

**ORDER REFUSING TO RENEW THE CERTIFICATE OF AUTHORITY AND
TAKING OTHER APPROPRIATE ACTION**

On this day, the matter of Foresthaven Cemetery Corporation (Respondent), located in Sugar Land, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

I. Findings of Fact

1. Respondent is a perpetual care cemetery (PCC) operating under certificate of authority number 83. It is located in Sugar Land, Texas. Respondent's cemetery is often referred to as Aldine Cemetery and its address is 2110 Aldine Meadows Road, Houston, Texas 77032.
2. Corwin L. Teltschik (Teltschik) is the owner of Respondent. Since 1994, he has been Respondent's president. As of December 1, 2017, Ibrahim Badat (Badat) has been Respondent's vice-president.
3. The Texas Department of Banking (Department) regulates PCCs under the authority of Texas *Health and Safety Code* (Health Code) Chapter 712.
3. Health Code § 712.0032 requires a corporation that is operating a PCC to have a certificate of authority that is issued by the Department.
4. Health Code § 712.0036 states that certificates of authority expire March 1 of each year and must be renewed.
5. Health Code § 712.0037 states that, as a condition of renewal, a certificate holder must meet the requirements that apply to an applicant for a new certificate of authority.
6. Health Code §§ 712.0034 and 712.0035 set out the qualifications for issuance of a certificate of authority. They require, among other things, that the applicant demonstrate that its character warrants the public confidence, that the issuance of the certificate of authority is in the public

interest, and that it is reasonable to believe that the applicant's cemetery business will be conducted in a manner commanding the public's trust and confidence.

7. The cemetery is less than five acres in size. Therefore, pursuant to Health Code §712.002(1) it was not required to obtain a certificate of authority to operate as a PCC. It voluntarily obtained one in 1976. There are persons buried in the cemetery.
8. Teltschik has owned Respondent for approximately 30 years. During that time Respondent has not sold any plots.
9. As of December 31, 2017, the perpetual care fund totals \$27,204.62. Pursuant to Health Code § 712.021(h) the Commissioner may authorize a corporation to place its perpetual care trust fund in a segregated interest-bearing account at a Texas financial institution if the corporation has been operating a perpetual care cemetery in this state for at least two years, the fund has a balance of less than \$100,000, and the income is insufficient to pay trustee fees. The Commissioner has authorized such placement for Respondent's perpetual care fund.
10. In 2016 the income from the perpetual care fund was \$115. According to Health Code §§712.021 and 712.025, the principal of the fund must remain inviolable. The income from the fund is to be used to provide for the general care and maintenance of the cemetery. The income generated by the fund is insufficient to keep the cemetery mowed and adequately maintained.
11. In 2016, Teltschik began the process with the Department to transfer the cemetery to a third party non-profit organization, headed by Badat. The Department was working with Teltschik and the Texas Attorney General's Office to effectuate a transfer pursuant to Health Code § 712.0255 and Property Code § 112.054.
12. In the Fall of 2016, Teltschik authorized Badat to clear the cemetery. Badat instructed contractors to remove brush and trees. Some of the descendants of persons buried in the cemetery (the Descendants) complained to the Harris County District Attorney, alleging that the cemetery had been bulldozed and headstones destroyed. The matter was taken to the grand jury, which no-billed it.
13. In March 2017, before the parties filed the lawsuit required under Health Code § 712.0255, the Department began receiving numerous written complaints from the Descendants. The complaints raised the same allegations that had been made to the district attorney, i.e., that the cemetery had been bulldozed and headstones destroyed. As required by 7 Texas Administrative Code § 26.12, Respondent responded to these complaints in writing. Respondent claimed that no headstones were destroyed.

14. The Department determined that it could not proceed with the planned § 712.0255 action to modify or terminate the perpetual care fund at that time.
15. On August 10, 2017, representatives of the Department met with approximately 17 Descendants. The Descendants spoke of their concerns regarding the cemetery. They discussed the destruction of the headstones and the fact that the Descendants had been mowing the cemetery because the cemetery was not being maintained. Department representatives explained the role of the Department in the regulation of perpetual care cemeteries. Department representatives informed the Descendants that the Descendants could provide the Department with written comments when Respondent's certificate of authority came up for renewal.
16. While maintaining that Respondent did not destroy any headstones, Badat has caused the fabrication of headstones for two persons. The Department has been informed that these headstones are ready to be set in the cemetery.
17. Respondent timely filed its application for renewal.
18. The Department has received comments from 16 Descendants, all requesting that the certificate of authority not be renewed. The Department also received a letter from the Office of the Harris County Attorney, requesting that the certificate of authority not be renewed and stating that Harris County would take over the maintenance of the cemetery if the certificate of authority was not renewed. Health Code § 713.028 authorizes a county to maintain a cemetery that has a grave marker more than 50 years old so long as the cemetery is not a perpetual care cemetery or one maintained by a religious or fraternal organization.
19. The Department sent all comments received to Teltschik and to Charles Maynard (Maynard), Badat's attorney. The Department also received written comments from Teltschik and Maynard.
20. The Department has reviewed the renewal application and all the comments it has discussed above.
21. The Commissioner finds that Respondent's agents destroyed two or more headstones in the Fall of 2016 when they cleared the cemetery. The Commissioner finds that the manner in which Respondent allowed its agents to clear the cemetery was not undertaken with the care due to the persons interred in the cemetery and does not demonstrate a character that warrants the public's confidence. The Commissioner finds further that the cemetery business has not been conducted in a manner commanding the public's trust and confidence and that the renewal of the certificate of authority is not in the public interest.

22. The Commissioner finds further that the cemetery has not been adequately maintained by the certificate holder. The Commissioner finds that Harris County is willing to maintain the cemetery, but cannot do so if the cemetery remains a perpetual care cemetery.
23. The Commissioner finds that based upon the review of the renewal application and all comments received, it is appropriate to refuse to renew the certificate of authority and to provide for the maintenance of the perpetual care fund in a manner consistent with law.
24. Health Code § 712.00395 sets forth a process whereby certain small inactive cemeteries may surrender their certificates of authority. Although that process is not involved in this proceeding, the statute provides requirements for the order that the Commissioner issues in such cases. The Commissioner finds those requirements to be appropriate in a case such as this in which the Commissioner refuses to renew a certificate of authority.

II. Conclusions

25. Respondent does not meet the qualifications and does not satisfy the requirements that apply to an applicant for a new certificate of authority as required by Health Code § 712.0037; therefore, the certificate of authority may not be renewed.
26. In particular, the qualification in Health Code § 712.0034(b)(1) that Respondent's character must warrant the public's confidence is not satisfied because the manner in which Respondent allowed its agents to clear the cemetery was not undertaken with the care due to the persons interred in the cemetery.
27. Additionally, the qualification in Health Code § 712.0034(b)(3) and § 712.0035(a)(2) that the issuance of the certificate be in the public interest is not satisfied because the manner in which Respondent allowed its agents to clear the cemetery was not undertaken with the care due to the persons interred in the cemetery.
28. Finally, the qualification in Health Code § 712.0035(a)(1) that it is reasonable to believe that the applicant's cemetery business will be conducted in a manner commanding the public's trust and confidence is not satisfied because the manner in which Respondent allowed its agents to clear the cemetery was not undertaken with the care due to the persons interred in the cemetery.
29. Pursuant to Health Code § 712.0037(c), the Commissioner may refuse to renew the certificate of authority and take other action the Commissioner considers appropriate.
30. Pursuant to Health Code § 712.021(b) the principal of the trust fund is to remain inviolable.
31. The four conditions imposed by Health Code § 712.00395(h) in an order approving the surrender of a certificate of authority are appropriate to be imposed in this order.

III. Order

32. IT IS ORDERED that Certificate of Authority Number 83 is not renewed.

33. IT IS ORDERED that:

- a. the principal of the perpetual care funds now on deposit remain inviolable, with only the permissible distributions to be used for perpetual care of the cemetery in general and for those plots that were purchased before the certificate of authority was not renewed.
- b. Respondent remove any signage or other announcement stating that the cemetery is a perpetual care cemetery.
- c. Each contract and other evidence of ownership entered into after the date of the order must clearly state that the cemetery is not regulated by the Texas Department of Banking and must not use the term “perpetual care cemetery.”

34. IT IS ORDERED THAT Respondent must retain existing records regarding the perpetual care fund for five (5) years after the date of this order and continue to comply with all recordkeeping requirements of Chapter 711 of the Health Code.

35. IT IS ORDERED THAT, not later than the 10th day after the date of this order, Respondent shall deliver the original certificate of authority to the Commissioner along with a written notice that includes the location of Respondent’s records and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to the records.

IV. Effective Dates

Pursuant to Health Code § 712.0037(d), this Order Refusing to Renew the Certificate of Authority and Taking Other Appropriate Action will take effect on March 30, 2018, which is the 31st day after the date the order is mailed, unless Respondent requests a hearing not later than the 30th day after the date the order is mailed.

Signed on this 26th day of February 2018.

/s/ Charles G. Cooper

Charles G. Cooper

Texas Banking Commissioner

Service

This Order is served on Respondent by certified mail, return receipt requested and first class mail, sent on February 27, 2018 to:

Mr. Corwin Teltschik, President
Foresthaven Cemetery Corporation
14090 Southwest Freeway, Suite 300
Sugar Land, Texas 77478

And sent on February 27, 2018 via email to:

Corwin Teltschik at xx@xxxx.xxx

Charles Maynard at xxxxxxxxxxx@xxxxxxxx.xxx

/s/ Deborah H. Loomis

Deborah H. Loomis

Deputy General Counsel

Texas Department of Banking

Date: February 26, 2018