

ORDER NO. 2019-015

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
HERNANDEZ FUNERAL HOME, INC.	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
MARIA DE LA LUZ HERNANDEZ	§	
	§	
ROSENBERG, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

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

On this day, the matter of Hernandez Funeral Home, Inc. and Maria de la Luz Hernandez (collectively “Respondents”), of Rosenberg, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (“Commissioner”), for consideration and action.

I. Findings of Fact

- A. Respondents hold Permit No. 628 issued by the Texas Department of Banking (“Department”) for the sale of prepaid funeral contracts.
- B. On January 9, 2019, the Department commenced a routine examination of Respondents’ records. During the examination, Department staff noted the following irregularities on the cancellations of three prepaid funeral contracts totaling \$5,155.68:
 - 1. all three contracts were paid in full;
 - 2. all three contracts were cancelled on April 18, 2018;
 - 3. the cancellations were processed by Judy Cavazos, Vice President and Office Manager of Hernandez Funeral Home, Inc., for whom the Department previously denied a majority share in the permit holder;
 - 4. the cancellations were notarized by the same notary on the same day, April 18, 2018; and

5. the signatures on the cancellation forms are not consistent with the purchasers' signatures on the original contracts.

C. Due to these irregularities, the Department requested copies of the cancelled refund checks from Ms. Cavazos to verify payment had been made to the purchasers. On January 24, 2019, Ms. Cavazos faxed the Department copies of two alleged refund checks:

1. check number 7455, dated April 30, 2018, payable to S. A.1 in the amount of \$918.53; and
2. check number 9945, dated May 15, 2018, payable to M. B. G. in the amount of \$1,800.

The copies include images of the backs of the checks. Although the images are very difficult to read, the alleged refund checks appear to have been presented to Respondents' bank for payment.

D. Ms. Cavazos also faxed the Department the front of a third check dated May 15, 2018 in the amount of \$2,227.50. Only the date and amount of the check are legible. Ms. Cavazos told the Department the check was issued to M. P. for the cancellation of her prepaid funeral contract, but M. P. never cashed the check.

E. On February 11, 2019, the Department contacted M. G. B. to verify she cancelled her contract. M. G. B. informed the Department by telephone and a written statement that she had not made a request to cancel the contract, had not signed a cancellation form, nor received a cancellation refund. M. G. B. further stated by telephone that she desires for her contract to remain in place. On April 16, 2019, M. G. B. contacted the Department and stated she had spoken with Respondents who told her there would be a 10% fee to cancel her contract, but her funds had already been used. Respondents' explanation to M. G. B. was inconsistent with Respondents' explanation to the Department that M. G. B. cancelled her contract and was issued a refund check which cleared the bank.

¹ Initials throughout this Emergency Order are used to preserve privacy.

- F. On March 14, 2019, the Department requested copies of check numbers 7455 and 9945 from Respondents' bank. Respondents' bank stated they were unable to provide copies of the checks because neither check had been presented to the bank for payment. This, in combination with M. B. G.'s statements that she did not cancel her contract or receive a refund, indicates suspicious activity.
- G. The Department also requested bank statements from Respondents' bank. The bank statements show that on April 18, 2018, the same day the three prepaid funeral contracts in question were cancelled, \$5,155.68, the total amount of the three cancelled contracts, was withdrawn from Respondents' trust account and deposited into Respondents' operating account. The bank statements also show that five days later on April 23, 2018, the following three suspicious withdrawals were made from Respondents' operating account:
1. a cash withdrawal of \$2,341.23, which is the exact amount of the principal and interest shown on the certificate of cancellation for the contract sold to M. P. This is the same cancellation for which Ms. Cavazos says the refund check was never cashed;
 2. a cash withdrawal of \$1,800.00, which is the exact amount of the principal shown on the certificate of cancellation for the contract sold to M. B. G., who stated she had never requested cancellation of her contract or received any refund; and
 3. a transfer withdrawal to an unknown account ending in "1250" for \$500.00.
- Ms. Cavazos has never stated to the Department that she refunded the purchasers with cash. Rather, she has repeatedly stated that she issued three refund checks for the cancelled contracts.

II. Conclusions of Law

- A. The Commissioner is authorized by Texas Finance Code § 154.412(a) to issue an order to seize accounts in which prepaid funeral funds, including earnings, may be held and seize records that relate to the sale of prepaid funeral benefits if the Commissioner finds, by examination or

other credible evidence, that a person misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person.

- B. 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.
- C. On April 18, 2018, Respondents cancelled three prepaid funeral contacts totaling \$5,155.68. One of the purchasers stated to the Department that she did not cancel her contract or receive a refund. Respondent's bank stated to the Department that the alleged refund checks were never presented to the bank for payment. On the same day, Respondents withdrew \$5,155.68 from their trust account and deposited the funds into their operating account. Five days later on April 23, 2018, Respondents withdrew \$4,641.23 in cash related to the cancellations from their operating account. Respondents have not provided the Department with adequate documentation to support the alleged refunds. Thus, the Commissioner finds by credible evidence that Respondents misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to Respondents.
- D. The Commissioner finds that this violation constitutes sufficient cause for the issuance of an order to seize prepaid funeral accounts and records under Texas Finance Code § 154.412(a) and an order to cease and desist from selling or cancelling contracts with prepaid funeral benefits under Texas Finance Code § 154.408(a).
- E. 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 to immediately seize Respondents' accounts in which prepaid funeral funds, including earnings, may be held, and seize and take possession of the contracts and other records of Respondents that relate to the sale or cancellation of prepaid funeral benefits, wherever they may be located, held or found, including the funeral home location at 800 4th St, Rosenberg, TX 77471. 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, sale and cancellation of prepaid funeral benefits contracts and the acceptance of related funds.

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 Accounts and 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 Accounts and Records will be served in person to Respondents' registered or authorized agent, and by first class mail and certified mail, return receipt requested, to the following individual:

Maria de la Luz Hernandez
Hernandez Funeral Home, Inc.
800 4th St.
Rosenberg, Texas 77471

Maria de la Luz Hernandez
1203 Miles St.
Rosenberg, Texas 77471

Signed on this 30th day of April 2019.

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