

**ORDER NO. 2019-025**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE THE BANKING</b>
	§	
<b>OLIVER W. LOMAX, INDIVIDUALLY</b>	§	
	§	
<b>and as</b>	§	
	§	
<b>OWNER AND FUNERAL DIRECTOR</b>	§	
<b>IN CHARGE OF LOMAX FUNERAL</b>	§	<b>COMMISSIONER OF TEXAS</b>
<b>HOME</b>	§	
	§	
<b>and</b>	§	
	§	
<b>LOMAX FUNERAL HOME</b>	§	
	§	
<b>DALLAS, TEXAS</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**CONSENT ORDER**

On this day, the matter of Oliver W. Lomax and Lomax Funeral Home (Respondents), located in Dallas, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Per the Texas Funeral Service Commission (TFSC), Lomax Funeral Home is a licensed funeral establishment (license number 3663). Oliver W. Lomax is the owner of the establishment and funeral director in charge (license number 7379). Per the Texas Department of Insurance (TDI), Mr. Lomax is a licensed limited lines agent (license number 13515). Respondents do not hold a permit to sell prepaid funeral benefits, but work with permitted insurance companies to sell insurance-funded prepaid funeral benefits contracts.
2. The Texas Department of Banking (Department) has jurisdiction over Respondents 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. Respondents have been properly notified of their right to an administrative hearing under Finance Code Chapter 154 (Chapter 154).
4. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 154.161, 154.406, 154.4061 and 154.411.
5. Any violation of this Order could subject Respondents to additional regulatory or enforcement actions authorized by Chapter 154 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Texas Finance Commission (Finance Commission) under Chapter 154 or other applicable law.
6. Nothing in this Order diminishes the regulatory enforcement powers of the TFSC or the TDI.
7. 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 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.
8. Respondents and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondents 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 order issued under Chapter 154 has been violated.

9. The Commissioner has considered this matter and finds as follows:
- a. On July 8, 2016, Barbara T. Williams (Decedent) purchased an insurance-funded prepaid funeral benefits contract (PFC) from Respondents. Respondents signed the PFC as the funeral provider. The Contract was to be funded by an insurance policy issued by Lifetime Services, Inc. (Lifetime) of Austin, Texas, which is a party to the PFC as the seller. Lifetime holds Department permit number 914 to sell and maintain prepaid funeral benefits contracts.
  - b. The Decedent died on February 20, 2017.
  - c. On December 11, 2017, the Department conducted a routine examination of Lifetime's permit number 914. During the examination, the Department discovered that Respondents failed to honor the PFC at the time of need. Instead, Respondents prepared a Statement of Funeral Goods and Services Selected (At-need Statement), which included services and merchandise comparable to the items selected in the PFC, but at current day prices without the package discounts reflected in the PFC. In addition, the At-need Statement included a Saturday service fee and a charge for additional death certificates. As part of its examination, the Department prepared a pre-need to at-need reconciliation to compare the PFC to Respondents' At-need Statement. The reconciliation revealed that Respondents' use of the At-need Statement in place of honoring the PFC resulted in an overcharge to the Decedent's family of \$1,323.
  - d. On behalf of the Decedent's family, B. G.1 paid for the at-need services and merchandise by assigning \$8,796 in proceeds from a separate life insurance policy to Respondents. The

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<sup>1</sup> Initials used to preserve privacy.

separate life insurance policy, which was issued by Lincoln Heritage Life Insurance Company (Lincoln Heritage), was not related to the PFC. The \$8,796 payment is shown on the At-need Statement, but there is no credit for the payments the Decedent made toward the PFC prior to her death.

- e. Under the terms of the PFC, Respondents were required to deliver the guaranteed services and merchandise selected in the PFC at no additional cost if:
  - i. the premium payments were current;
  - ii. all outstanding insurance policy loans were repaid;
  - iii. the purchaser complied with the insurance policy provisions; and
  - iv. the remaining balance due on the insurance policy funding the PFC was paid before the funeral service, or Respondents agreed to another payment arrangement.
- f. Per Lifetime, the Decedent followed the terms and conditions of the PFC and related insurance policy. The Decedent was current on her payments, did not have any outstanding insurance policy loans and complied with the insurance policy provisions. At the time of the Decedent's death, \$6,251 was due on the insurance policy funding the PFC.
- g. Although the Decedent's family used the unrelated Lincoln Heritage policy to pay for the funeral service, this did not relieve Respondents of their obligations under the PFC. Respondents were required to deliver the guaranteed services and merchandise selected in the PFC at no additional cost, and should have applied a portion of the \$8,796 available from the Lincoln Heritage policy to the \$6,251 due on the PFC. By failing to honor the PFC at the time of need, Respondents are in breach of the PFC terms.
- h. Finance Code § 154.161 (a)(2) states that, after the death of the contract beneficiary under a PFC, the funeral provider shall:

- i. deliver the contracted funeral merchandise and services and cash advance items required under the contract;
  - ii. prepare a written pre-need to at-need reconciliation to verify that the specified goods and services are delivered or performed for the agreed price and promptly refund any contract overcharges that may be revealed by the reconciliation;
  - iii. prepare a reconciliation of proceeds applied to cash advance items; and
  - iv. retain a copy of each reconciliation until the third anniversary of the date of service.
- i. As noted above, Respondents delivered merchandise and services comparable to the items selected in the PFC. However, Respondents did not prepare any reconciliations, perform for the agreed price, or refund the \$1,323 overcharge revealed by the Department's reconciliation. Thus, Respondents are in violation of Finance Code § 154.161(a)(2).
- j. Finance Code § 154.161(a)(3) states in part that, with respect to each prepaid funeral benefits contract for which the funeral provider is not also the seller, the funeral provider shall:
  - i. promptly deliver the records that verify contract performance to the seller, including the final at-need contract and required reconciliations; and
  - ii. if requested by the seller, correct or explain any discrepancy in a reconciliation; and
  - iii. provide copies of any other records or documentation related to the offer, sale, and performance of the contract that are reasonably requested by the seller or the Department, including records related to any refund.
- k. Respondents did not provide Lifetime with any records to prove contract performance. Moreover, Respondents ignored repeated requests by Lifetime and the Department to

provide a refund and other records related to the matter. Thus, Respondents are in violation of Finance Code §154.161(a)(3).

l. Pursuant to Finance Code §154.411(2), the Commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the Commissioner finds that the person misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract. Based on the findings above, the Commissioner finds that restitution in the amount of \$1,323 is warranted.

m. Pursuant to Finance Code § 154.406, the Commissioner may impose an administrative penalty on a person who violates Chapter 154 or a final order of the Commissioner. As required by § 154.406(c), the Commissioner has considered the seriousness of the violations, Respondents' compliance history, and Respondents' good faith in attempting to comply with Chapter 154. Based on Respondents' willful disregard of the repeated requests by Lifetime and the Department that Respondents provide a refund to the Decedent's family and other information to Lifetime and the Department, the Commissioner finds that Respondents have displayed bad faith in attempting to comply with Chapter 154. Therefore, the Commissioner finds that a penalty of \$1,000 is appropriate.

10. Respondents have agreed to comply with the terms that are set out in the Order below.

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

## **ORDER**

It is hereby ORDERED, ADJUDGED and DECREED that within 30 days of the effective date of this Order, Respondents will cause to be delivered to the Department a cashier's check made payable to B. G.2 in the amount of \$1,323 as payment of restitution to the Decedent's family. It is further ORDERED, ADJUDGED and DECREED that within 60 days of the effective date of this Order, Respondents will cause to be delivered to the Department a cashier's check made payable to the Texas Department of Banking in the amount of \$1,000 as payment for the penalty assessed. Failure to pay the full amount of the restitution by the due date constitutes a violation of this Order. In the event of such a violation of this Order, any remaining restitution and any remaining penalty become immediately due.

## **EFFECTIVE DATES**

This Order against Respondents is effective on the date signed by the Commissioner and is final and non-appealable 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 will 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 19<sup>th</sup> day of August 2019.

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

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<sup>2</sup> Initials used to preserve privacy, but the check will be made payable to the full name of the beneficiary.

**AGREED AND APPROVED AS TO FORM AND SUBSTANCE:**

/s/ Oliver W. Lomax  
Oliver W. Lomax, Individually

July 17, 2019  
Date

/s/ Oliver W. Lomax  
Oliver W. Lomax as Owner and Funeral Director  
in Charge of Lomax Funeral Home

July 17, 2019  
Date

**APPROVED AS TO FORM:**

/s/ Morris L. Overstreet  
Morris L. Overstreet  
Attorney for Respondents

August 15, 2019  
Date

/s/ Alice E. Geyer  
Alice E. Geyer  
Assistant General Counsel  
Texas Department of Banking

August 19, 2019  
Date