

**ORDER NO. 2019-034**

<b>IN THE MATTER OF:</b>	§	<b>BEFORE THE BANKING</b>
	§	
<b>ROBLES MORTUARIES, INC. DBA</b>	§	
<b>SUNSET MEMORIAL OAKS</b>	§	
<b>CEMETERY</b>	§	
	§	
<b>AND</b>	§	
	§	
<b>RICHARD D. ROBLES</b>	§	<b>BANKING COMMISSIONER</b>
	§	<b>OF THE STATE OF TEXAS</b>
	§	
<b>AND</b>	§	
	§	
<b>RUDY D. ROBLES, JR.</b>	§	
	§	
<b>DEL RIO, VAL VERDE COUNTY,</b>	§	
<b>TEXAS</b>	§	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**CONSENT ORDER**

On this day, the matter of Robles Mortuary, Inc. DBA Sunset Memorial Oaks Cemetery, Richard D. Robles, and Rudy D. Robles, Jr. (collectively “Respondents”), of Del Rio, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (“Commissioner”), for consideration and action.

**I. Findings of Fact**

1. Respondent Robles Mortuary, Inc. DBA Sunset Memorial Oaks Cemetery (“RM”) operates as a perpetual care cemetery subject to chapter 712 of the Texas Health and Safety Code pursuant to certificate of authority number 49.
2. RM also maintains prepaid funeral benefits contracts subject to chapter 154 of the Texas Finance Code pursuant to permit number 1092.
3. Respondent Richard D. Robles owns 60% of RM.
4. Respondent Rudy D. Robles, Jr. own 40% of RM.
5. On January 31, 2019, the Texas Department of Banking (“Department”) received an Annual

Statement of Funds and Certificate of Authority Renewal Report (the “PCC Renewal”) from RM for its certificate of authority to operate a perpetual care cemetery.

6. The PCC Renewal was incomplete because it did not contain financial statements no older than December 31, 2017, including a balance sheet and income statement, as required by the Department and applicable law. See Tex. Health & Safety Code § 712.0037(a)(2); Tex. Dept. of Banking, Annual Statement of 2018 Perpetual Care Fund Activity and Certificate of Authority Renewal Filing Instructions at 1.
7. The Department informed Respondents on February 19, 2019 that their PCC Renewal was incomplete.
8. Respondents’ certificate of authority to operate a perpetual care cemetery lapsed on March 1, 2019 and was not renewed until September 30, 2019.
9. Respondents continued to operate a perpetual care cemetery in Texas despite the lapse of their certificate of authority to do so.
10. Respondents received written notice from the Department that they were in violation of chapter 712 of the Texas Health and Safety Code on March 5, 2019. Included in this written notice was a request for the missing financial statements on or before April 4, 2019.
11. Respondents received a reminder via e-mail on April 2, 2019 regarding the request for missing financial statements.
12. Respondents received further written notice from the Department that they were in violation of chapter 712 of the Texas Health and Safety Code on April 17, 2019. Included in this written notice was a request for the missing financial statements on or before May 15, 2019.
13. On February 27, 2019, Respondents received written Reports of Examination issued by the Department on that date regarding RM’s perpetual care cemetery certificate of authority (the “PCC ROE”) and RM’s prepaid funeral benefit permit (the “PFC ROE”).

14. The PCC ROE required RM to (a) provide its financial statements or tax returns no older than December 31, 2017, (b) review its historical register of all interment rights sold, make any necessary corrections, and provide a written report on the same to the Department, (c) register with the Texas Office of Consumer Credit Commissioner as a creditor under chapter 345 of the Texas Finance Code, and (d) renew its assumed name certificate with the Texas Secretary of State and provide the Department with proof of that renewal. As noted in the PCC ROE, this was the fourth consecutive examination finding that RM had violated applicable rules of the Texas Finance Commission requiring the maintenance of an accurate historical register of all interment rights sold.
15. The PFC ROE required RM to (a) review its compliance with the abandoned property requirements of Texas law, take all actions necessary to correct any instances of noncompliance, and provide a written report on the same to the Department, and (b) review all outstanding prepaid funeral contracts for compliance with the applicable record maintenance requirements of Texas law and applicable rules of the Texas Finance Commission, and provide a written report on the same to the Department. As noted in the PFC ROE, both of these requirements related to violations by RM that had been found to exist in prior examinations, and this was the fourth consecutive examination finding that RM had violated applicable law regarding reporting of abandoned property.
16. The PFC ROE also required RM to renew its assumed name certificate with the Texas Secretary of State and provide the Department with proof of that renewal.
17. Respondents also received written notice accompanying the PCC ROE and the PFC ROE demanding compliance with the applicable requirements therein no later than April 3, 2019.
18. On April 16, 2019, Respondents received further written notice demanding compliance with the applicable requirements of the PCC ROE and the PFC ROE identified in paragraphs 14

and 15 above on or before May 15, 2019.

19. RM's permit to maintain contracts for prepaid funeral benefits, permit number 1092, lapsed on June 1, 2019 and was not renewed until September 30, 2019.
20. Despite the lapse of its restricted permit to maintain prepaid funeral benefits subject to chapter 154 of the Texas Finance Code, RM continued to maintain contracts for prepaid funeral benefits that have not been fully discharged.
21. On August 14, 2019, the Department sent Respondents further written notice demanding compliance with the requirements stated above on or before September 16, 2019. Respondents did not contact the Department regarding this demand until September 14, 2019 and have not fully complied with this demand insofar as it relates to complying with the PCC ROE and the PFC ROE.

## **II. Conclusions of Law**

### **a. Violations of Chapter 712 of the Texas Health & Safety Code and Applicable Regulations**

22. The Commissioner is authorized by Texas Health and Safety Code § 712.0443 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 Health and Safety Code chapter 712.
23. The Commissioner is authorized by Texas Health and Safety Code § 712.0441 to issue an administrative penalty against a person who either (a) violates Texas Health and Safety Code chapter 712 or applicable rules of the Texas Finance Commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from Department, or (b) engages in a pattern of violations.
24. The Commissioner finds that Respondent RM has violated Texas Health and Safety Code § 712.0032 operating a perpetual care cemetery in Texas without holding a certificate of

authority to do so.

25. The Commissioner finds that Respondent RM received written notice of the violation identified in paragraph 24 above on March 5, 2019 and did not correct such violation before the 31st day after that date.
26. The Commissioner finds that Respondent RM violated 7 Tex. Admin. Code § 26.2 by not maintaining readily accessible current financial statements or tax returns.
27. The Commissioner finds that Respondent RM violated 7 Tex. Admin. Code § 26.2 by not maintaining a readily accessible historical register of all interment rights sold.
28. The Commissioner finds that Respondent RM received written notice of the violations identified in paragraphs 26 and 27 above on February 27, 2019 and did not correct such violations before the 31st day after that date.
29. The Commissioner finds that Respondents Richard D. Robles and Rudy D. Robles, Jr. are responsible for the violations and actions of Respondent RM identified in paragraphs 24 through 28 above.

**b. Violations of Chapter 154 of the Texas Finance Code and Applicable Regulations**

30. The Commissioner is authorized by Texas Finance Code § 154.406 to issue an administrative penalty against a person who either (a) violates Texas Finance Code chapter 154 or applicable rules of the Texas Finance Commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from Department, or (b) engages in a pattern of violations.
31. The Commissioner finds that Respondent RM violated Texas Finance Code § 154.107 by not renewing its restricted permit thereunder while continuing to maintain contracts for prepaid funeral benefits that have not been fully discharged.

32. The Commissioner finds that Respondent RM violated Texas Finance Code § 154.302 by not providing the notices regarding money presumed to be abandoned as required thereunder.
33. The Commissioner finds that Respondent RM violated 7 Tex. Admin. Code § 25.11 by not maintaining the required records relating to outstanding prepaid funeral contracts.
34. The Commissioner finds that Respondent RM received written notice of the violations identified in paragraphs 32 and 33 above on February 27, 2019 and did not correct such violations before the 31st day after that date.
35. The Commissioner finds that Respondents Richard D. Robles and Rudy D. Robles, Jr. are responsible for the violations and actions of Respondent RM identified in paragraphs 31 through 34 above.

### **III. Order**

36. Respondents have been properly notified of their right to an administrative hearing under Chapter 154 of the Texas Finance Code and Chapter 712 of the Texas Health & Safety Code.
37. Respondents have agreed to comply with the terms that are set out in the Order below.
38. Respondents agree and represent that they fully understand the terms and requirements of this Order.
39. 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.

40. 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 any law or any applicable rule or order has been violated.

41. 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 shall be construed to limit Respondents' right to contest any future finding or determination of non-compliance.

42. Any violation of this Order, including without limitation failure to timely pay the administrative penalty assessed below or timely comply with the requirements stated below, could subject Respondents to additional regulatory or enforcement actions authorized by applicable law. Such additional regulatory or enforcement actions may result in, without limitation, additional administrative penalties.

43. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Texas Finance Commission, or any other governmental entities or agencies.

44. In accordance with by Texas Health and Safety Code § 712.0441 and Texas Finance Code § 154.406, an administrative penalty in the amount of \$10,000 is hereby ASSESSED against all Respondents jointly and severally. No later than November 15, 2019, 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 \$10,000.

45. Each Respondent is hereby ORDERED to submit to the Department, or cause the submission

of, on or before January 1, 2020:

- a. a written acknowledgement by the RM Board of Directors regarding RM's response to the PCC ROE and PFC ROE;
- b. written documentation evidencing the full review of RM's historical register of all interment rights sold for compliance with 7 Tex. Admin. Code § 26.2;
- c. written documentation evidencing RM's registration with the Texas Office of Consumer Credit Commissioner as a creditor under chapter 345 of the Texas Finance Code;
- d. written documentation evidencing RM's renewal of its assumed name certificate with the Texas Secretary of State;
- e. written documentation evidencing RM's review of its compliance with the applicable abandoned property requirements of Texas law and RM's corrective actions regarding any instances of noncompliance; and
- f. written documentation evidencing RM's full review of all outstanding prepaid funeral benefit contracts for compliance with applicable Texas recordkeeping requirements for the same, including any supporting documentation, which shall include, without limitation, a spreadsheet detailing the full review of outstanding prepaid funeral benefit contracts to ensure copies of such contracts are being retained.

#### **IV. Effective Date**

46. 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 shall have been modified, terminated, suspended, or set aside in accordance with applicable law.

Signed on this 14<sup>th</sup> day of November, 2019.

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

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

/s/ Richard D. Robles  
Richard D. Robles, and as Majority Owner and  
President of Robles Mortuary, Inc. DBA  
Sunset Memorial Oaks Cemetery

Date: November 8, 2019

/s/ Richard D. Robles  
Richard D. Robles, Individually

Date: November 8, 2019

/s/ Rudy D. Robles, Jr.  
Rudy D. Robles, Jr., Individually

Date: November 8, 2019

**APPROVED AS TO FORM:**

/s/ Jesse T. Moore  
Jesse T. Moore  
Assistant General Counsel  
Texas Department of Banking

Date: November 13, 2019