

ORDER NO. 2010-010

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
JACKSON MORTUARY, INC.	§	COMMISSIONER OF TEXAS
	§	
HOUSTON, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**Order to Cease and Desist Activity, Order of Seizure
of Prepaid Funeral Accounts and Records, Order Canceling
Permit of Jackson Mortuary, Inc. and Order of Restitution**

On this day, the matter of Jackson Mortuary, Inc., Houston, Texas (“Respondent”), was submitted to the Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

I. Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondent is located in Houston, Texas, and acquired Permit No. 917 on August 7, 1991, to sell prepaid funeral benefits contracts (“PFBC”) to the public under Chapter 154 of the Texas Finance Code.
2. The Report of Examination of Respondent as of the close of business on November 30, 2008, stated that Respondent held sixty-nine (69) outstanding PFBC and trust funds in the amount of approximately \$136,000.00.
3. In November, 2009, the Texas Department of Banking (“Department”) forwarded to Respondent a request from _____ for cancellation of a fully paid PFBC purchased in 1988 and a request for refund in the amount of \$2,675.67 plus the amount of accumulated earnings that would have accrued if the funds had been placed in trust.
4. Respondent declined to refund the monies to _____ stating that the funds received from her PFBC had not been placed into trust as required by law. The principals in the Respondent funeral home have not agreed to provide restitution to _____ from their personal funds.
5. The funeral home property used by Respondent was damaged as a result of Hurricane Katrina in August, 2005, resulting in the lack of ability of Respondent to service its outstanding PFBCs. Respondent no longer possesses the funeral home establishment license required by the Texas Funeral Service Commission to perform the services under a PFBC.

6. On December 2, 2009, the Department attempted to correspond with Respondent seeking to resolve the consumer complaint filed by _____, determine the status of the repairs to the funeral home, identify the names of funeral homes that have agreed to honor the outstanding PFBC held by Respondent, and obtain a copy of the written agreements between Respondent and the funeral homes. The Department requested a response by December 21, 2009. Respondent did not reply to the correspondence from the Department.
7. The Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC because Respondent admits the funds received from the sale of the PFBC were not placed into trust as required by law; the request by _____ to cancel the PFBC was not honored and her request for restitution was not handled in accordance with law. Immediate action is necessary to take possession of records and trust funds because Respondent has not complied with the provisions of Chapter 154, Texas Finance Code. Respondent's funeral home cannot service the outstanding PFBC and Respondent has not furnished the Department with a status report.

II. Conclusions of Law

Based upon the foregoing Findings of Fact, the Commissioner makes the following Conclusions of Law:

1. The Commissioner has jurisdiction over this matter pursuant to Texas Finance Code, Chapter 154.
2. The Commissioner finds by examination and other credible evidence that Respondent has violated Chapter 154, § 154.253, Texas Finance Code, by failing to timely deposit funds into a trust-fund account and Chapter 154, § 154.155, Texas Finance Code, by failing to timely honor a refund request.
3. The Commissioner is authorized by § 154.408, Texas Finance Code, 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 a law of this state relating to the sale of PFBCs including a violation of this chapter or a final order of the Commissioner or rule of the commission.
4. The Commissioner is authorized by Chapter 154, § 154.412, Texas Finance Code, to issue an order seizing prepaid funeral accounts and records of Respondent if the Commissioner finds by examination or other credible evidence that Respondent has failed to deposit or remit money in accordance with Chapter 154, Texas Finance Code.

5. The Commissioner is authorized by § 154.109(a)(1), Texas Finance Code, to cancel a permit if the Commissioner finds by examination or other credible evidence that certain events have occurred, including a finding that the person has violated Chapter 154, Texas Finance Code.
6. Based upon Findings of Fact nos. 4, 5, and 6, Respondent's Permit No. 917 should be canceled as provided for in § 154.109(a)(1), Texas Finance Code.
7. Based upon Findings of Fact 4, 5, 6, and 7, immediate and irreparable harm is threatened to the public and beneficiaries of outstanding PFBC and the Department should immediately seize and take custody of the outstanding PFBCs sold and administered under Permit No. 917 and seize all records and prepaid funds related to those contracts as provided for in § 154.412(c), Texas Finance Code, including but not limited to, those trust funds in the trust account number _____, Moody National Bank, Galveston, Texas.
8. Based upon Findings of Fact Nos. 4, 5, and 6, the Department should order Respondent to cease and desist from selling prepaid funeral benefits under § 154.408, Texas Finance Code.
9. Based upon Findings of Fact No. 4, Respondent must make restitution to _____ in the amount of \$2,675.67 plus the amount of accumulated earnings that would have accrued if the funds had been placed in trust in 1988.

III. Order

In accordance with § 154.109(a)(1), Texas Finance Code, it is ORDERED that Respondent's prepaid funeral contract permit No. 917 is cancelled effective March 22, 2010.

In accordance with § 154.408, Texas Finance Code, Respondent is ORDERED to cease and desist from engaging in the sale of any prepaid funeral benefits.

In accordance with Section 154.411, Texas Finance Code, Respondent is ORDERED to pay restitution to _____ in the full amount of her PFBC plus earnings from 1988;

In accordance with § 154.412, Texas Finance Code, it is hereby further ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of:

1. all funds located in account number _____, Moody National Bank, Galveston, Texas;
2. all prepaid funeral money collected by Respondent and all earnings thereon, wherever located, including funds at any bank or other financial institution where prepaid funeral funds are held; and

3. the contracts and other records of Respondent that relate to the sale of prepaid funeral benefits, wherever they may be located, held or found, including the location of the Jackson Mortuary, Inc., Houston, Texas.

IV. Effective Date

Pursuant to §§ 154.110(a)(2) and 154.408(d), Texas Finance Code, the Order Cancelling Permit, Order for Restitution, and Order to Cease and Desist Activity will take effect on March 22, 2010 (which is the 16th day after the date this Order was mailed to Respondent), unless on or before March 20, 2010, (which is the 15th day after the date this Order was mailed) the Respondent requests a hearing pursuant to §§ 154.110(c), 154.408(d), and/or 154.412(d), Texas Finance Code. The Order of Seizure of Prepaid Funeral Money and Records is effective immediately under the provisions of Chapter 154, § 154.412(c), Texas Finance Code, but a hearing may requested pursuant to § 154.412(c)(c-1).

V. Service

This Order is served on Jackson Mortuary, Inc., by first class mail, and certified mail, return receipt requested, sent on March 5, 2010, to Mr. Orrin Duncan, Board Chair, P.O. Box 60273, Houston, Texas 77205-0273, Sabrina Duncan-Rose, Registered Agent, 3354 Rogerdale Road, No. 321, Houston, Texas 77042, and to Jackson Mortuary, Inc., 2517 Wheeler, P.O. Box 8152, Houston, Texas 77288.

Signed this 1st day of March, 2010.

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