

ORDER NO. 2010-012

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
GONZALEZ FAMILY FUNERAL HOME, LLC	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
GONZALEZ-RIVERA FUNERAL HOME OF EDINBURG, LLC	§	
	§	
EDINBURG, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

Emergency Order To Seize Prepaid Funeral Records

On this day, the matter of Gonzalez Family Funeral Home, LLC (Gonzalez Family FH), and Gonzalez-Rivera Funeral Home of Edinburg, LLC (Gonzalez-Rivera FH), (Respondents),¹ all of Edinburg, Texas, was submitted to the Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

I. Findings

1. Nora Rivera (Rivera) is the managing member of Gonzalez-Rivera FH, which she formed as a limited liability company in April, 2009, at 812 East Cano, Edinburg, Texas, the same address as Gonzalez Family FH.
2. Gonzalez Family FH and/or its predecessor, Gonzalez Funeral Home, held, from April, 1987 until August, 1995, prepaid funeral benefits permit number 821 issued by the Texas Department of Banking (Department) under Chapter 154 of the Texas Finance Code, to sell prepaid funeral benefits contracts (PFBCs) to the public.
3. In 1995, Gonzalez Family FH transferred its PFBCs to Lurnetian Services, Inc., permit number 956, of Houston, Texas. Lurnetian Services later became American Data Source, Inc. (ADS). ADS has in trust only three contracts transferred from Gonzalez Family FH, none of which belong to the complainants described below.
4. Rivera failed to designate a new funeral director in charge of Gonzalez Family FH in October, 2009, when the registered funeral director in charge left Gonzalez Family FH. On January 10, 2010, the Texas Funeral Service Commission (TFSC) closed the establishment. No Respondent currently has an establishment license or a PFBC permit.

5. In October, 2009, the Department received a consumer complaint regarding two insurance-funded PFBCs, entered into by an employee of Gonzalez Funeral Home, who signed purportedly on behalf of Homesteaders Life Company (Homesteaders). The employee never forwarded the contracts or money to Homesteaders.
6. In February, 2010, the Department received a second consumer complaint regarding two improperly funded PFBCs. Gonzalez Funeral Home, predecessor of Gonzalez Family FH, originally issued two consumers trust-funded contracts of \$3,090 each in 1994. These contracts, however, do not appear among the contracts ADS received from Gonzalez Funeral Home in 1995. When the consumers went to Gonzalez Family FH in 2009, an employee of Gonzalez Family FH certified that the consumers had paid in full for certain services and wrote them new insurance-funded PFBCs for remaining funeral goods.
7. The Commissioner finds that immediate or irreparable harm is threatened to the public or a beneficiary under a PFBC because Respondents have failed to properly deposit payments and paperwork on several PFBCs. Based on the Department's experience in past cases, when a person has written one contract without complying with the laws governing PFBCs, more illegal contracts come to light.

II. Conclusions

8. The Commissioner is authorized by § 154.412(a) of the Texas Finance Code, to issue an order seizing prepaid funeral records of a person if the Commissioner finds by examination or other credible evidence that certain events have occurred, including that the person:
 1. failed to deposit or remit money in accordance with Subchapter B or F of Chapter 154 of the Texas Finance Code; or
 2. misappropriated, converted, or failed to pay money belonging to a beneficiary under a prepaid funeral benefits contract; or
 3. does not hold a permit.
9. The Commissioner finds by credible evidence that Respondents have failed to remit money in accordance with Subchapter F of Chapter 154 of the Texas Finance Code, by failing to forward money paid on several PFBCs to either an insurance company or restricted deposit account.
10. The Commissioner finds by credible evidence that Respondents misappropriated or converted money belonging to a beneficiary under a PFBC, as stated in paragraphs 5 and 6 above.
11. The Commissioner finds by credible evidence that Respondents do not hold a permit.

12. The Commissioner finds that these violations constitute sufficient cause for issuance of an order to Respondents to seize their prepaid funeral accounts and records under § 154.412 of the Texas Finance Code.
13. The Commissioner is authorized by § 154.412(c) of the Texas Finance Code to cause the seizure order to take effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC.
14. The Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC for the reasons stated in paragraph 7, above, and also finds that the seizure order should be given immediate effectiveness because if Respondents have notice of the seizure order, they would have the opportunity to destroy records of other illegal contracts.

III. Order

In accordance with § 154.412 of the Texas Finance Code, it is hereby ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of the contracts and other records of Respondents that relate to the sale of prepaid funeral benefits contracts, wherever they may be located, held or found, including the location of Gonzalez Family Funeral Home and Gonzalez-Rivera Funeral Home, in Edinburg, Texas.

IV. Effective Dates

Pursuant to § 154.412(c) of the Texas Finance Code, this Order to Seize Records will take effect immediately.

V. Notice of Right to Hearing

Pursuant to § 154.412(c-1) and (d) of the Texas Finance Code, Respondents have the right to request in writing an opportunity for a hearing to show that the emergency order should be stayed.

VI. Service

This Order will be served via personal service.

Signed on this 5th day of March, 2010.

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

¹ The funeral home at issue in this mailer has been operated under several different names and/or corporate forms. When this Order refers to "Respondents" it is referring to the funeral home and the person or entity in charge of it at the relevant time. Nothing in this Order shall be construed to imply that Nora Rivera has committed wrongdoing.