

ORDER NO. 2010-029

DOCKET NO. B-3024-10-034

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
JEFFREY GENTRY DBA GENTRY	§	
FIFE FUNERAL HOME	§	
JUNCTION, TEXAS	§	
	§	
AND	§	
	§	COMMISSIONER OF TEXAS
GENTRY FUNERAL HOME	§	
MASON, TEXAS	§	
	§	
AND	§	
	§	
JOHN CASHMAN	§	
JUNCTION, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

Agreed Order and Amendment Of Commissioner's Order No. 2010-11

On this day, came on for consideration by Texas Banking Commissioner Charles G. Cooper ("Commissioner") the matter of Jeffrey Gentry dba Gentry Fife Funeral Home, Junction, Texas and Gentry Funeral Home, Mason, Texas and Fort Stockton, Texas ("Gentry"); and John Cashman, Junction, Texas ("Cashman"). Gentry and Cashman are jointly referred to as "Respondents." This matter concerns the Emergency Order Cancelling Permit, to Cease and Desist Activity, and to Seize Funds and Records, Commissioner Order No. 2010-11 ("Order No. 2010-11"); and the issues of restitution and penalties set forth in the Second Amended Notice of Hearing filed in Docket No. B-3024-10-034, all of which concern Gentry's selling prepaid funeral benefits contracts ("PFBCs") in violation of state law, and related matters. Assistant General Counsel Deborah H. Loomis represents the Texas Department of Banking ("Department"). Gentry is represented by Steve Pickell, Kerrville, Texas. Cashman is represented by David Jackson and Ilse Bailey, Kerrville, Texas.

1. Respondents and the Department jointly request the Commissioner to dispose of this matter pursuant to the provisions of Texas Government Code § 2001.056 by entering this Agreed Order. Respondents and the Department stipulate to the facts found by the Commissioner and the parties agree to comply with the terms of this Agreed Order.

2. Gentry has previously withdrawn his challenge to Order No. 2010-11. Gentry has also agreed that he will pay the restitution claims, administrative penalties, and costs of the administrative proceeding.
3. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Texas Finance Code Chapter 154, and Texas Government Code §§ 2001.171 et seq.
4. Gentry is the owner of the business known as Gentry Fife Funeral Home, Junction, Texas; and Gentry Funeral Home, Mason, Texas and Fort Stockton, Texas. Gentry is a licensed funeral director.
5. On March 1, 2010, the Commissioner issued Order No. 2010-11 against Gentry, which required him to cease and desist from engaging in the sale of PFBCs, cancelled his Permit No. 485 to sell prepaid funeral benefits, and ordered the seizure of his PFBC records and funds.
6. On March 4, 2010, Russell Reese, Director of Special Audits of the Texas Department of Banking (“Reese”), served Order No. 2010-11 on Gentry by delivering it to Gentry’s office manager at Gentry-Fife Funeral Home in Junction, Texas. Gentry communicated with Reese and the office manager by phone and directed the office manager to allow Reese to only open certain file cabinet drawers and to take certain files. Reese asked Gentry if that was all the PFBC files and Gentry said it was. Later the Department became aware that over twenty PFBC files had not been turned over and demanded Gentry turn them over. On March 18, 2010, Gentry turned over an additional box of PBFC files to the Department. On March 19, 2010, an additional illegal contract (beneficiary _____) came to the Department’s attention when attempts were made to obtain a cashier’s check to refund the purchaser her money. On April 26, 2010, an additional illegal contract (beneficiary _____) came to light via a consumer complaint to the Department.
7. Gentry was a designated agent for at least three insurance companies authorized to sell PFBCs: National Prearranged Services, Inc., of Austin, Texas (“NPS”), operating under Permit No. 818, until NPS agreed to stop selling PFBCs pursuant to an order issued by the Commissioner on April 8, 2008; Funeral Agency, Inc. of Abilene, Texas, operating under Permit No. 673; and Security National Life Insurance Company (“Security National”) of Salt Lake City, Utah, operating under Permit No. 1006.

8. On February 13, 2003, Gentry designated Cashman as his agent under Texas Finance Code § 154.160. Pursuant to § 154.160(c)(2), Cashman is responsible for the deposit of money collected under PFBCs.
9. Funds received by Gentry from the sale of eight (8) PFBCs to the purchasers listed in paragraph 10 below were not placed in trust or submitted to an insurance company as insurance premiums in accordance with Texas Finance Code Chapter 154, §§ 154.203 or 154.253.
10. Gentry sold trust-funded PFBCs in violation of Texas Finance Code Chapter 154 to the following purchasers: _____ for the benefit of _____; _____; _____; _____ for the benefit of _____; _____ for the benefit of _____; and _____. The total for these PFBCs is \$31,835.00 and the funds collected on these contracts were not deposited in trust, as required by law.
11. Gentry sold two insurance-funded PFBCs as agent for Security National to _____ and _____, and failed to submit to Security National the \$4,958.00 in prepaid funeral contract funds collected on these contracts as required by law.
12. Gentry has provided a sworn affidavit stating that the illegal contracts and sales recited herein are the only ones in which he has engaged.
13. Gentry agreed to arrange for the cremation of the _____ and took \$150.00 from the _____ for that purpose.
14. Gentry took corrective action by paying restitution to _____ in the amount of \$ 3,900.00 in or about January, 2010, and restitution in the amount of \$7,455.00 to _____ on or about March 19, 2010. These amounts total \$11,355.00. Therefore, the total amount due as restitution for the remaining four trust-funded contracts is \$20,480.00.
15. Gentry has presented to the Department satisfactory evidence that the following contract beneficiaries are deceased: _____, _____, _____, and _____. Gentry has presented satisfactory evidence to the Department showing that he has honored the trust-funded PFBCs for each of the two deceased contract beneficiaries listed above, for which the Department has agreed the Respondents are entitled to restitution credits of \$6,040.00 for _____, \$4,058.00 for _____, \$3,976.00 for _____, and \$5,007.50 for _____, for a total credit of \$19,081.50.
16. Therefore, the total due as restitution on the trust-funded contracts is \$20,480.00 minus the credit of \$19,081.50 for a net total of \$1,398.50. Gentry and Cashman are jointly and severally

liable for this amount of \$1,398.50. Gentry is also liable for the \$4,958.00 that he took illegally for the two insurance-funded PFBCs. Therefore, Gentry is liable for a total of \$6,356.50 in restitution.

17. Gentry and the Department have agreed that he will maintain his Permit No. 485 for so long as his trust-funded PFBCs remain active. A list of his active trust-funded PFBCs is attached hereto as Exhibit A. These contracts are all paid in full and Gentry, his funeral homes, his employees and his agents shall be prohibited from selling any new or additional prepaid funeral services or contracts whatsoever for three years from the effective date of this Agreed Order. Once all his existing contracts have matured, his permit will immediately expire, unless he is granted permission to sell under a trust permit again as set forth below in paragraph 18. Therefore, Order No. 2010-11 is hereby amended to allow him to maintain his Permit No. 485 as set forth in this Agreed Order. Other than this limited exception, the previous parts of Order No. 2010-11 which prohibit Gentry from selling prepaid funeral benefits, either by trust-funded or insurance-funded contracts, remain in full force and effect.
18. If Gentry and/or his funeral homes and/or any of his employees or agents desire to sell PFBCs in the future, they must apply in accordance with Texas Finance Code § 154.102 and any applicable rules of the Texas Finance Commission. The Commissioner may investigate and shall evaluate the application in accordance with Texas Finance Code § 154.103, as though the application was for an initial permit. If a trust-funded permit is thereafter awarded, or the conditions currently imposed on Permit No. 485 are then removed, all sales of prepaid funeral benefits under that permit must be made only on pre-printed sequentially numbered contracts in a form approved by the Department.
19. The Commissioner has considered the matter and finds Gentry has committed the following violations, which Gentry admits:
 - a. Gentry violated Texas Finance Code§ 154.053(a) and 7 Texas Administrative Code §§ 25.10 and 25.11 by failing to maintain records on all PFBCs sold and failing to produce them when the Department examined him.
 - b. Gentry violated Texas Finance Code§ 154.151 by writing PFBCs on non-approved Department forms, i.e., he wrote them on “at need” contract forms.

- c. Gentry violated Texas Finance Code§ 154.159 by failing to deposit moneys received for eight PFBCs either into the trust account or with the appropriate insurer.
 - d. Gentry violated Texas Finance Code§ 154.201 by soliciting a PFBC to be paid from an insurance policy and yet not having the insurance policy issued.
 - e. Gentry violated Texas Finance Code§ 154.203 by failing to turn over insurance premiums paid for an insurance-funded PFBC to the insurance company.
 - f. Gentry violated Texas Finance Code§ 154.252 by retaining all the money paid to him for certain trust-funded PFBCs.
 - g. Gentry violated Texas Finance Code§ 154.253 by failing to deposit trust moneys to the trust account within 30 days of receiving them.
 - h. Gentry violated Texas Finance Code§ 154.264 by failing to maintain accounting records showing the amounts deposited with respect to each PFBC.
 - i. Gentry violated Commissioner's Order No. 2010-011 by failing to turn over all his PFBC records when Reese served Order No. 2010-011 on March 4, 2010, and demanded the records.
 - j. Gentry acted with a pattern of willful disregard of Chapter 154 when he repeatedly misappropriated funds that were given to him for PFBCs, failed to produce for examination records of all the PFBCs he had sold, deposited PFBC funds into his personal bank accounts as well as his business' operating account, and failed to turn over all his PFBC records when ordered to by the Banking Commissioner.
20. The \$6,356.50 that Gentry is liable for in restitution shall be paid to the Department for the benefit of the purchasers of those PFBCs. The Department will refund the money paid to each purchaser. Should any purchaser elect to reenter a trust-funded PFBC with Gentry, the purchaser must pay the PFBC in full and Gentry must put 100% of the payment in the trust

account. Gentry is obligated to furnish the services originally contracted for at no greater than the price originally paid. If Gentry does reenter any such PFBC, Gentry shall, within three days of the purchaser's signing the PFBC, send the Department copies of the PFBC, the mode of payment, and a copy of the deposit slip showing the deposit into the trust account. At the time of sale, Gentry shall give the purchaser copies of the PFBC, showing that it is paid in full, and any other forms filled out at the time of sale.

21. Respondents acknowledge that they were duly served with notice of the hearing that was scheduled for April 22, 2010.
22. The Commissioner has the authority to issue this Agreed Order and to assess restitution pursuant to Texas Finance Code § 154.411.
23. The Commissioner has the authority to issue this Agreed Order and to assess penalties pursuant to Texas Finance Code §§ 154.406 and 154.4061. The imposition of an administrative penalty against Gentry in the amount of \$23,000.00 is appropriate and reasonable given the seriousness and pattern of the cited violations by Gentry.
24. The statutory and regulatory provisions at issue in the administrative hearing pending against Respondents include Texas Finance Code §§ 154.053, 154.109, 154.110, 154.151, 154.159, 154.160, 154.201, 154.2021, 154.203, 154.252, 154.253, 154.264, 154.406, 154.4061, 154.408, 154.4081, 154.411, and 154.412 and 7 Texas Administrative Code §§ 25.10 and 25.11.
25. Any violation of this Order could subject Gentry to additional regulatory or enforcement actions authorized by Texas Finance Code Chapter 154, Subchapter I. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Texas Finance Code Chapters 35 and 154, or other applicable law.
26. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - a. The right to challenge, before the Commissioner or in any other forum, Order No. 2010-011;
 - b. Service upon Respondents of this Agreed Order;
 - c. The right to present defenses to the allegations;

- d. Notice and hearing prior to imposition of an administrative penalty and an order for restitution;
- e. The filing of proposed findings of fact and conclusions of law;
- f. The issuance of a proposal for decision by an administrative law judge;
- g. The filing of exceptions and briefs with respect to such proposal for decision;
- h. Any review of this Agreed Order or Order No. 2010-011 by the Texas Finance Commission; and
- i. Judicial review of this Agreed Order or Order No. 2010-011 as provided by Texas Government Code §§ 2001.171 et seq. and any other challenge to the validity of this Agreed Order or Order No. 2010-011.

27. Gentry agrees to make restitution in the amount of \$6,356.50.

28. Gentry agrees to pay penalties in the amount of \$23,000.00.

29. Gentry agrees to pay court costs in the amount of \$389.44.

30. Gentry agrees to refund the _____ \$150.00 for their _____ prepaid cremation.

31. Cashman agrees that he is liable for restitution of \$1,398.50, which is the amount still due on the illegal trust-funded PFBCs.

32. After clearance of the payments due and signing by the Commissioner of this Agreed Order, the Commissioner agrees to dismiss the proceeding pending in Docket No. B-3204-10-034.

33. After the Commissioner signs the Agreed Order and clearance of the payments due, the Department agrees to notify Junction National Bank, Junction, Texas, that this matter has been settled and to request that all restrictions placed upon the Respondents' accounts at that institution pursuant to Order No. 2010-11 be immediately lifted and all funds in the accounts be returned to the control of Respondents. The Department also agrees, at that time, to return to Respondents all books, records and documents seized from Gentry pursuant to Order No. 2010-11.

34. Respondents and the Department have agreed to the factual findings, legal conclusions and terms and conditions of this Agreed Order.

Order

WHEREFORE, based upon the foregoing, the Commissioner ORDERS that this matter is resolved in accordance with the following terms:

1. Commissioner's Order No. 2010-11 is final and unappealable, provided however that to the extent there is any conflict between the terms and conditions of this Agreed Order and Order No. 2010-11, this Agreed Order shall supersede the terms and conditions of Order No. 2010-11.
2. Gentry shall not engage in activities in violation of Texas Finance Code Chapter 154, and shall take sufficient action to comply with the requirements of Texas Finance Code Chapter 154.
3. Respondents are jointly and severally liable for the payment of \$1,398.50 as restitution to purchasers who purchased trust-funded PFBCs sold in violation of Texas Finance Code, Chapter 154, and identified in paragraph 10 of this Agreed Order.
4. Gentry is individually liable for the payment of \$4,958.00 as restitution to purchasers of insurance-funded contracts.
5. All restitution shall be paid on or before the effective date of the Agreed Order.
6. Gentry is individually liable for the payment of all administrative penalties. The payment of administrative penalties to the Department shall be as follows:
 - a. The sum of \$5,000 shall be payable to the Department on or before the effective date of this Agreed Order.
 - b. The remainder shall be paid in nine (9) monthly payments of \$2,000.00 each beginning on June 1, 2010 and continuing on the first day of each month thereafter until paid.
 - c. Failure to make a monthly payment by the 5th of the month shall cause the due date of the unpaid balance to be accelerated and immediately due and payable.
 - d. Failure to pay the accelerated balance within thirty (30) days after receiving notice of default and acceleration from the Department will result in the referral of this matter to the Office of the Attorney General for collection.
7. On or before the effective date of the Agreed Order, Gentry will pay the costs the Department has incurred to date, which total \$389.44, per the bill of costs attached as Exhibit B.

- Signed this 12th day of May, 2010.

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

State of Texas ()
County of Kerr ()

May 11, 2010
Date

APPROVED AS TO FORM:

/s/ Steve Pickell
Steve Pickell
Attorney for Jeffrey Gentry

May 7, 2010
Date

/s/ David Jackson
David Jackson
Attorney for John Cashman

May 11, 2010
Date

/s/ Deborah H. Loomis
Deborah H. Loomis
Assistant General Counsel
Texas Department of Banking

May 11, 2010
Date