

ORDER NO. 2010-033
DOCKET NO. B-3036-10-031

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

AGREED ORDER

On this day, the matter of Jackson Mortuary, Inc. (Respondent), was submitted to me, Charles G. Cooper, Texas Banking Commissioner (Commissioner), for consideration and action. Respondent and the Texas Department of Banking (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 (Order).

1. Respondent agrees to this Order solely for the purpose of resolving this proceeding and without admitting or denying any factual allegations or alleged violations of law or regulations.
2. 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 Texas Finance Code Chapter 154.
3. 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.
4. In November, 2009, the Department forwarded to Respondent a request from _____ for cancellation of a fully paid PFBC purchased in 1988 for _____ 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.

5. 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.
6. The funeral home property used by Respondent was damaged as a result of a storm in 2002, 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.
7. 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.
8. On March 1, 2010, the Commissioner issued 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, No. 2010-010 (C&D Orders). These C& D Orders are the subject of the appeal filed by Respondent on March 19, 2010.
9. Pursuant to the C&D Orders, the Department seized Respondent's records related to the PFBCs and has determined that PFBCs sold from November 1986 to July 1989, to _____ in the amount of \$2,675.67; _____ in the amount of \$2,642.00; _____ in the amount of \$3,101.50; _____ in the amount of \$2,640.00; and _____ in the amount of \$3,300.00, were not properly trusted as required by Texas Finance Code Chapter 154. Had these funds been properly deposited, earnings would have accrued. A conservative simple

interest calculation of 3% annually would be \$5,511.92. Accordingly, the Department seeks restitution in the amount of \$19,871.09 as authorized by Texas Finance Code § 154.411 and civil penalties as authorized by Texas Finance Code § 154.406, in an amount not to exceed \$1,000 for each day the violations of Texas Finance Code Chapter 154, have occurred and have not been corrected by Respondents.

10. On April 12, 2010, the Department notified Respondent that a hearing will be conducted for the purpose of considering the appeal of the C&D Orders, issued by the Banking Commissioner on March 1, 2010, and for the purpose of determining whether to order restitution and to assess administrative penalties against Respondent, for violations of Texas Finance Code Chapter 154, §§ 154.155 and 154.253, relating to PFBCs.
11. Respondent acknowledges that it was duly served with the C&D Orders and the Notice of Hearing.
12. The Department has jurisdiction over Respondent and the subject matter of this proceeding pursuant to Texas Finance Code Chapter 154, and Texas Government Code §§ 2001.171 et seq.
13. The Commissioner has the authority to issue this Order and to assess restitution pursuant to Texas Finance Code § 154.411.
14. Respondent has agreed to withdraw its appeal of the C&D Orders, No. 2010-010, issued by the Commissioner on March 1, 2010.
15. Respondent has agreed to make restitution in the amount of \$19,871.09.
16. The Commissioner has the authority to issue this Order and to assess penalties pursuant to Texas Finance Code §§ 154.406 and 154.4061.
17. Respondent has agreed to pay an administrative penalty in the amount of \$10,000.00.

18. The combined amount of the restitution and the administrative penalties is \$29,871.09, which amount Respondent will pay over eight monthly installments beginning July 17, 2010. The first seven installments will be in the amount of \$3,733.89, and the final installment will be in the amount of \$3,733.86. Provided, however, the balance shall be paid earlier if the funeral home property is sold.
19. As set out in the C&D Orders, the Department will remain in custody of the outstanding PFBCs sold and administered under Permit No. 917, as well as the records and prepaid funds related to those contracts, including the trust funds in trust account number _____, Moody National Bank, Galveston, Texas, so the Department may begin the process of finding a successor permittee to administer the outstanding contracts and funds seized by the Department. Upon entry of this Order, the Department assumes the responsibility only as to the PFBCs in its possession as of the date of this Order.
20. Any violation of the C&D Orders in the future could subject Respondent to additional regulatory or enforcement actions authorized by Texas Finance Code §§ 154.401 to 154.414. 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 25 and 154, or other applicable law.
21. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
- a. Service upon Respondent of this Order;
 - b. The right to present defenses to the allegations;
 - c. Notice and hearing prior to imposition of an administrative penalty and an order for restitution;
 - 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 Texas 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.
22. The Commissioner has considered the matter and finds that Respondent violated Texas Finance Code §§ 154.109, 154.155, 154.253, 154.264, 154.406, and 154.411, by failing to refund the monies from funds received from a prepaid funeral benefits contract and failing to deposit the funds in trust or to submit the funds to an insurance company licensed to sell prepaid contracts.
23. The Commissioner finds that the C&D Orders issued against Respondent on March 1, 2010 (Order No. 2010-010), are final.

ORDER

It is hereby ORDERED, ADJUDGED AND DECREED that:

1. Respondent shall not engage in activities in violation of Texas Finance Code Chapter 154.
2. Respondent is liable for the payment of \$19,871.09 as restitution to be paid to the Department for the benefit of purchasers of PFBCs wherein the funds were not properly placed in trust, and \$10,000.00 as payment for administrative penalties.
3. The combined amount of the restitution and the administrative penalties is \$29,871.09. The payment and the balance of restitution and administrative penalties shall be paid in eight monthly installments beginning July 17, 2010. The first seven installments will be in the amount of \$3,733.89, and the final installment will be in the amount of \$3,733.86. The installments become immediately due and payable in the event of Respondent's failure to pay

the balance of these installments within thirty (30) days of their due date, and will result in the referral of this matter to the Office of the Attorney General for collection. Provided, however, the balance shall be paid earlier if the funeral home property is sold.

4. As set out in the C&D Orders, the Department will remain in custody of the outstanding PFBCs sold and administered under Permit No. 917, as well as the records and prepaid funds related to those contracts, including the trust funds in trust account number _____, Moody National Bank, Galveston, Texas, seized by the Department. Upon entry of this Order, the Department assumes the responsibility only as to the PFBCs in its possession as of the date of this Order.
5. Except as otherwise stated herein, this Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondent that come to the attention of the Department.

EFFECTIVE DATE

This Order against Respondent is effective on the date signed by the Commissioner and, subject to its terms, Respondent may not appeal.

Signed this 7th day of July, 2010.

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

APPROVED AS TO FORM:

/s/ Carl Galant
Carl Galant
Attorney for Respondent
McGinnis, Lochridge & Kilgore, L.L.P.

June 16, 2010
Date

/s/ Robert Giddings
Robert Giddings
Assistant General Counsel
Texas Department of Banking

July 6, 2010
Date

I AGREE TO ALL THE TERMS OF THIS ORDER AND TO ITS ENTIRE FORM AND SUBSTANCE.

/s/ Sabrina Duncan Rose
Sabrina Duncan Rose
Registered Agent

July 7, 2010
Date

State of Texas §
 §
County of Harris §

Sworn to and subscribed before me on the 7th day of July, 2010, by Sabrina Duncan Rose.

/s/ Hasnain Mohammad Naqvi
Notary Public's signature

/s/ Orrin Duncan
Orrin Duncan
Board Chair

June 21, 2010
Date

State of Louisiana §
 §
County of Orleans §

Sworn to and subscribed before me on the 21th day of June, 2010, by Orrin Duncan.

/s/ Ariana J. Newman
Notary Public's signature