

**ORDER NO. 2010-042**

**IN THE MATTER OF:**

**MARTIN LEATHERWOOD DBA  
LEATHERWOOD MEMORIAL CHAPELS**

**BRADY, TEXAS**

**§ BEFORE THE BANKING**

**§**

**§**

**§ COMMISSIONER OF TEXAS**

**§**

**§**

**§ AUSTIN, TRAVIS COUNTY, TEXAS**

**AGREED ORDER**

On this day, came on for consideration by Texas Banking Commissioner Charles G. Cooper (“Commissioner”) the matter of Martin Leatherwood dba Leatherwood Memorial Chapels, Brady, Texas (“Respondent”). This matter concerns Respondent’s obtaining funds for a prepaid fund prepaid funeral benefits contract (“PFBC”) and failing to remit those funds to the insurance company who was to fund the PFBC, in violation of state law. Assistant General Counsel Deborah H. Loomis represents the Texas Department of Banking (“Department”). Respondent represents himself.

1. Respondent 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. Respondent 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. Respondent acknowledges that the Commissioner has jurisdiction over this matter pursuant to Texas Finance Code Chapter 154, and Texas Government Code §§ 2001.171 et seq.
3. Respondent is the owner of the business known as Leatherwood Memorial Chapels, Brady, Texas. Respondent is a licensed funeral director.
4. Respondent was a designated agent for Funeral Agency, Inc. (FAI) and signed a PFBC on FAI’s behalf with Ms. A \_\_\_\_\_<sup>1</sup> (Ms. A) on July 10, 2009, for Ms. A’s own benefit. On the

---

<sup>1</sup> The purchaser of the PFBC is referred to by her initial to preserve her privacy.

same date, Ms. A and Respondent signed an application for insurance or annuity with FAI as the payer. Ms. A and her family members paid a total of \$1,017.00 to Respondent before Ms. A passed away in the fall of 2009. Respondent never sent the money he collected to FAI or the insurance company that funds its PFBCs, Funeral Directors Life Insurance Company (FDLIC), in violation of Texas Finance Code § 154.203.

5. Upon Ms. A's death, Respondent transported her to his funeral home and had her embalmed and dressed. After Respondent performed these services, Ms. A's family had Ms. A transferred to a different funeral home, which performed the remainder of the funeral services. To the extent that the services Respondent performed were valued at more than the \$1,017.00 he had already received, he was paid for services rendered.
6. Ms. A's family complained to the Department about Respondent's failure to transmit their payments to FAI/FDLIC. In their complaint they did not state that they were owed any money from Respondent. The Department wrote the complainants and asked if they felt they were damaged monetarily and complainants did not respond to the Department. Therefore, at this time no restitution is sought for the estate of Ms. A.
7. By signing this Agreed Order, Respondent swears that the PFBC discussed in this Agreed Order is the only PFBC in which he has taken any actions that violate Texas Finance Code Chapter 154.
8. Respondent violated Texas Finance Code §§ 154.159 and 154.203 by failing to deposit moneys received for Ms. A's PFBC with the appropriate insurer.
9. The Commissioner has the authority to issue this Agreed Order and to assess penalties pursuant to Texas Finance Code § 154.406. The imposition of an administrative penalty against Respondent in the amount of \$1,500.00 is appropriate and reasonable given the seriousness of

the violation, the fact that Respondent has no previous history of a violation, and Respondent's admission of guilt and agreement to pay the penalty.

10. Any violation of this Agreed Order could subject Respondent to additional regulatory or enforcement actions authorized by Texas Finance Code Chapter 154, Subchapter I. Nothing in this Agreed 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.

11. For purposes of this proceeding, Respondent knowingly and voluntarily waives:

- a. Service upon Respondent of this Agreed Order;
- b. The right to present defenses to the allegations;
- c. Notice and hearing prior to imposition of an administrative penalty;
- 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 Agreed Order by the Texas Finance Commission; and
- h. Judicial review of this Agreed Order as provided by Texas Government Code §§ 2001.171 et seq. and any other challenge to the validity of this Agreed Order.

12. Respondent agrees to pay a penalty in the amount of \$1,500.00.

13. Respondent and the Department agree 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. Respondent shall not engage in activities in violation of Texas Finance Code Chapter 154.
2. Respondent shall pay the administrative penalty to the Department as follows:
  - a. The sum of \$750.00 shall be payable to the Department upon execution of the Agreed Order.
  - b. The remainder shall be paid by October 1, 2010.
3. 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.
4. This Order against Respondent is effective on the date signed by the Commissioner, and subject to its terms, Respondent may not appeal.

Signed this 29th day of July, 2010.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Martin Leatherwood  
Martin Leatherwood

July 21, 2010  
Date

State of Texas                   §  
  §  
County of McCulloch       §

Sworn to and subscribed before me on the 21st day of July, 2010, by Martin Leatherwood.

/s/ Jodi Crudgington  
Notary Public's signature

APPROVED AS TO FORM:

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

July 26, 2010  
Date