

ORDER NO. 2010-054

IN THE MATTER OF:

**CRENSHAW FUNERAL HOME
PERMIT NUMBER 1070**

AND

**DON H. NAPIER, OWNER
CRENSHAW FUNERAL HOME**

SEGUIN, TEXAS

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BEFORE THE BANKING

COMMISSIONER OF TEXAS

AUSTIN, TRAVIS COUNTY, TEXAS

ORDER TO CEASE AND DESIST ACTIVITY AND CANCEL PERMIT

On this day, the matter of Crenshaw Funeral Home and Don H. Napier, owner, Crenshaw Funeral Home, (“Respondents”), Seguin, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

I. Findings of Fact

1. On July 19, 1996, a Cease and Desist Order was issued by the Texas Department of Banking (“Department”) against Mr. Don H. Napier and May – Crenshaw Funeral Home for selling prepaid funeral benefits contracts (“PFC”) without the permit required by Chapter 154, Texas Finance Code, and the May – Crenshaw Funeral Home and Don H. Napier were ordered to “cease and desist any and all prepaid funeral operations whatsoever.” On January 9, 1997, Agreed Order No. 1997-012 was issued by the Department, whereby Mr. Napier paid \$7,467.00 in restitution and a \$1,500.00 civil penalty and Don H. Napier and May-Crenshaw Funeral Homes agreed to abide by the terms and conditions of the July 19, 1996 Cease and Desist Order.
2. After the payment of all restitution and civil penalties owed to the Department by Respondents, the Department issued Permit Number 1070 to Respondent Crenshaw Funeral Home of Seguin, Texas on August 25, 2005, for the sale of trust-funded PFCs. Respondent Crenshaw Funeral

Home has reported zero contracts to the Department from the date of the issuance of the permit. This permit is currently restricted as a non-selling permit, and there are no outstanding trust-funded PFCs.

3. The Department received a complaint that on or about November 15, 2002, the Respondents sold to Ms. Lonita Brooks a PFC in the amount of \$3,000.00. This transaction occurred at a time after the Cease and Desist Order and Agreed Order were issued by the Department and before the Respondents obtained a permit pursuant to Chapter 154, Texas Finance Code, to sell trust-funded PFCs. This PFC was not written on the correct legal form approved by the Department. The existence of this illegal PFC was not disclosed to the Department at the time a permit was issued by the Department to Respondents in 2005 or during subsequent permit reviews.

II. Conclusions of Law

1. Respondents' sale and acceptance of money for a PFC without being licensed as required by Chapter 154, Texas Finance Code, is a violation of Chapter 154, § 154.101, Texas Finance Code, and a violation of the previous Agreed Order with Respondents
2. Respondents violated Chapter 154, § 154.101, Texas Finance Code, by selling a PFC to _____ without holding a permit issued by the Department. Pursuant to the provisions of § 154.158, Texas Finance Code, _____ is entitled to a refund because the PFC was sold in violation of § 154.101, Texas Finance Code. Had these funds been properly deposited, earnings would have accrued. A conservative simple interest calculation of 2.6% annually for eight years would be \$624.00.

3. Respondents' failure to disclose the PFC transaction with _____ when applying for a permit violated § 154.109(a), Texas Finance Code, because it concealed a material fact in the permit application.
4. The PFC transaction with _____ occurred after the issuance of a Cease and Desist Order and the subsequent Agreed Order prohibiting the sale of PFCs without a permit. At the time of the sale, Respondents did not possess a permit under Chapter 154, Texas Finance Code. This sale, when combined with the past transactions covered by the Cease and Desist Order, constitute a pattern of willful disregard within the meaning of §§ 154.406 and 154.4061, Texas Finance Code.
5. 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 PFCs, including a violation of Chapter 154, Texas Finance Code, or a final order of the Commissioner or rule of the Commission.
6. The Commissioner is authorized by § 154.109(a), Texas Finance Code, to cancel a permit issued pursuant to Chapter 154, Texas Finance Code, if the Commissioner finds by examination or other credible evidence that certain events have occurred, including a finding that a person has violated Chapter 154, Texas Finance Code, or other law of this state relating to the sale of PFCs, including a final order of the Commissioner or rule of the Commission, or that a person has misrepresented or concealed a material fact in the permit application
7. The Commissioner finds that the credible evidence of the above-described violations of the Texas Finance Code and the Department rules is sufficient cause for the issuance of a cease

and desist order to Respondents under § 154.408, Texas Finance Code, and the cancellation of Respondents permit under the provisions of § 154.109(a)(1), Texas Finance Code.

III. Order

In accordance with § 154.408, Texas Finance Code, Respondents are ORDERED to cease and desist from the sale of any PFCs for which a permit is required under Chapter 154, Texas Finance Code, whether conducted through Respondents' activities or through those of others.

Respondents are ORDERED to refund the \$3,000.00 purchase price of the PFC previously sold to _____ plus interest in the amount of \$624.00 accrued since the date of purchase.

It is ORDERED that Permit Number 1070 is cancelled.

It is further ORDERED that an administrative hearing be scheduled in this matter to determine the appropriate amount of administrative penalties and restitution, if any, to be assessed against Respondents for violations of Chapter 154, Texas Finance Code.

IV. Effective Date

Pursuant to §§ 154.110 and 154.408, Texas Finance Code, the Order to Cease and Desist Activity and Cancel Permit will take effect on October 9, 2010 (which is the 16th day after the date this Order was mailed to Respondent), unless on or before October 8, 2010, Respondents request a hearing pursuant to §§ 154.110(c) and 154.408(d), Texas Finance Code, (which is the 15th day after the date this Order was mailed).

V. Service

This Order will be served on Respondents, Crenshaw Funeral Home and Don H. Napier, Seguin, Texas by first-class mail and by certified mail, return receipt requested, sent on September 23, 2010 to:

Mr. Don H. Napier
Crenshaw Funeral Home
17001 FM 725
Seguin, Texas 78155
CMRRR# 7192 3020 0010 1000 2606

Signed on this 22nd day of September, 2010.

/s/ Charles G. Cooper
Charles G. Cooper
Banking Commissioner of the State of Texas