

ORDER NO. 2010-068

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
L.M. VICTORY, PRESIDENT	§	
THE RIX FUNERAL HOME	§	
LUBBOCK, TEXAS	§	
AND	§	COMMISSIONER OF TEXAS
THE RIX FUNERAL HOME	§	
	§	
LUBBOCK, TEXAS	§	
PERMIT NUMBER 139	§	
PERMIT NUMBER 967	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of L.M. Victory, President, The Rix Funeral Home (“Victory”), Lubbock, Texas and The Rix Funeral Home (“Rix”), Lubbock, Texas (“Respondents”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) for consideration and action. Respondents and the Texas Department of Banking (“Department”) have entered into an agreement and jointly request the Commissioner to dispose of this matter pursuant to § 2001.056, Texas Government Code. Respondents and the Department agree that the Commissioner may make the following Findings of Fact and Conclusions of Law and enter this Agreed Order (“Order”) and agree to the terms of the Order.

I. Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Chapter 154, Texas Finance Code, and §§ 2001.171 et seq, Texas Government Code.
2. Victory and Rix (“Respondents”), are located in Lubbock, Texas, and Rix held two Permits Number 139 and 967, respectively, issued by the Department, for the purpose of selling prepaid funeral benefits contracts (“PFC”) to the public.
3. Respondents violated the Texas Finance Code by failing to take corrective action in a timely manner necessary to correct the violations of Texas Finance Code, Chapter 154 and Title 7, Texas Administrative Code, as outlined in the three Reports of Examination of Respondents for the time periods ending as of the close of business on March 31, 2009, August 31, 2009,

and April 30, 2010, respectively. This pattern of repeat violations appears to constitute a pattern of willful disregard within the meaning of Texas Finance Code, §§ 154.406 and 154.4061.

4. Respondents failed to renew its annual prepaid funeral benefits permits as required by Texas Finance Code, §§ 154.101, 154.102, and 154.107, and the permits expired on June 1, 2010.
5. On or about May 21, 2010, the corporate charter of Rix was forfeited by the Texas Secretary of State. Victory is the owner of Rix.
6. Respondents are in non-compliance because they failed to file the 2009 Annual Reports and failed to pay the renewal fees as required under Texas Finance Code, §§ 154.051 and 154.052.
7. Respondents currently have outstanding preneed contracts and funds without valid permits issued by the Department in violation of Texas Finance Code, § 154.107.
8. On September 13, 2010, an Emergency Order to Cease and Desist Activity was issued by the Department against L.M. Victory, President, The Rix Funeral Home (“Victory”), Lubbock, Texas and The Rix Funeral Home (“Rix”), Lubbock, Texas from engaging in the sale of prepaid funeral benefit contracts for which a permit is required under Texas Finance Code, Chapter 154, whether conducted through Respondents’ activities or through those of others, until such time as Respondents have (1) corrected the outstanding violations of Texas Finance Code, Chapter 154, previously cited in the Reports of Examination issued to Respondents; (2) corrected any existing shortages in the trust fund accounts; (3) properly renewed PFC Permits Nos. 139 and 967; and (4) paid all outstanding fees and assessments to the Department.

II. Conclusions of Law

Based upon the foregoing Findings of Fact, the Commissioner makes the following Conclusions of Law:

1. The Commissioner has the authority to issue this Order pursuant to § 154.411, Texas Finance Code.
2. The Commissioner has the authority to issue this Order and to assess penalties pursuant to §§ 154.406 and 154.4061, Texas Finance Code.
3. Respondents have agreed to pay an administrative penalty in the amount of \$45,000.00.
4. Any violation of the Emergency Order to Cease and Desist Activity, Order No. 2010-051, in the future could subject Respondents to additional regulatory or enforcement actions authorized by §§ 154.401 to 154.414, Texas Finance Code. Nothing in this Order diminishes

the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapters 35 and 154, Texas Finance Code or other applicable law.

5. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - 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 §§ 2001.171 et seq., Texas Government Code, and any other challenge to the validity of this Order.
6. Nothing in this Agreed Order shall be deemed to diminish or restrict the regulatory or enforcement power of the Department, the Commissioner, the Finance Commission of Texas, or the Texas Funeral Services Commission to take further action in this matter.

III. Order

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner ORDERS that this matter is hereby resolved in accordance with the following terms:

1. Respondents are ORDERED to comply with the provisions of Commissioner's Order No. 2010-051 issued September 13, 2010, that ordered Respondents to immediately cease and desist from engaging in the sale of prepaid funeral benefit contracts for which a permit is required under Texas Finance Code, Chapter 154, whether conducted through Respondents' activities or through those of others, until such time as Respondents have (1) corrected the outstanding violations of Texas Finance Code, Chapter 154, previously cited in the Reports of Examination issued to Respondents; (2) corrected any existing shortages in the trust fund

accounts; (3) properly renewed PFC Permits Nos. 139 and 967; and (4) paid all outstanding fees and assessments to the Department.

2. Respondents are ORDERED to pay an administrative penalty in the amount of \$45,000.00 due and payable upon the execution of this Agreed Order for violations of Texas Finance Code, §§ 154.053(a), 154.253(a), 154.261 through 154.263, 154.102, 154.302, 154.156(a), 154.155(b); and TAC §§ 25.11(h), 25.11(d)(5), 25.11(d)(4), 25.3(b), 25.3(k)(5), 25.7(b)(2), 25.11(c)(4), and 25.3(d)(1). The schedule for payment of the administrative penalty shall be as follows: Five Thousand Dollars (\$5,000.00) to be paid upon the execution of this Agreed Order; and the remainder of Forty Thousand Dollars (\$40,000.00) to be paid in eight monthly installments of Five Thousand Dollars (\$5,000.00). If compliance is obtained regarding the outstanding violations that form the basis of the Cease and Desist Order within 60 days, the civil penalty will be reduced to \$35,000.00.
3. Respondents are ORDERED to hire an accountant to keep their business records in proper order for future compliance with the Department's rules and regulations regarding the sale of PFCs.
4. 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.
5. This Order against Respondent is effective on the date signed by the Commissioner, and subject to its terms, Respondent may not appeal.

Signed this 17th day of December 2010.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

The Rix Funeral Home

/s/ L.M. Victory
Ms. L.M. Victory
President

APPROVED AS TO FORM:

Texas Department of Banking

/s/ Robert Giddings
Robert Giddings
Assistant General Counsel

The Rix Funeral Home

/s/ Traci D. Robison
Traci D. Robison
Crenshaw, Dupree & Milam, L.L.P.
Attorney for Respondents