

**ORDER NO. 2011-032**

<b>IN THE MATTER OF:</b>	<b>§</b>	<b>BEFORE THE BANKING</b>
	<b>§</b>	
<b>EMMITT LEWIS, JR. DBA</b>	<b>§</b>	
<b>LEWIS FUNERAL HOME AND CHAPEL</b>	<b>§</b>	<b>COMMISSIONER OF TEXAS</b>
	<b>§</b>	
	<b>§</b>	
<b>BRENNHAM, TEXAS</b>	<b>§</b>	<b>AUSTIN, TRAVIS COUNTY, TEXAS</b>

**AGREED ORDER**

On this day, the matter Emmitt Lewis, Jr. dba Lewis Funeral Home and Chapel (Respondent), was submitted to the Banking Commissioner (Commissioner) of the State of Texas for consideration and action. This matter concerns the Emergency Order to Cease and Desist Activity, and to Seize Records and Funds, Commissioner Order No. 2011-049.

1. Respondent and the Texas Department of Banking (Department) jointly request the Commissioner to dispose of this matter pursuant to the provisions of Government Code § 2001.056 by entering this Agreed Order. Respondent and the Department stipulate to the facts found by the Commissioner in Order No. 2011-049, and as restated here, 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., and that the Commissioner has the authority to issue this Agreed Order under Texas Government Code § 2001.056.
3. Respondent operates a funeral home known as Lewis Funeral Home and Chapel, located at 4010 Highway 105 East, Brenham, Texas. Respondent does not hold the permit required by Texas Finance Code § 154.101 to sell prepaid funeral contracts (PFCs) in Texas.
4. On May 5, 2011, the Commissioner issued Order No. 2011-049, which required Respondent to cease and desist from engaging in the sale of PFCs, and ordered the seizure of his PFC records and funds. The Commissioner based Order No. 2011-049 on findings that Respondent violated Texas Finance Code § 154.101 by selling a PFC without the required permit on December 12, 2010; Respondent violated Texas Finance Code § 154.159 by failing to properly place in trust the collected funds as prescribed by Subchapters E and F of Texas Finance Code Chapter 154; Respondent further violated Texas Finance Code § 154.159 by collecting an

overage from the consumer at the time of the beneficiary's funeral in January 2011. Respondent corrected the overcharge on March 28, 2011, and no further restitution to the customer is necessary.

5. Texas Finance Code § 154.406 authorizes the Commissioner to assess administrative penalties in this matter. The imposition of an administrative penalty against Respondent in the amount of \$2000.00 is appropriate and reasonable given the nature of the violations cited in Paragraph 4 above.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas, or restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of law in future proceedings.
7. Respondent has been notified of its right to a hearing on the matter of administrative penalties under Texas Finance Code § 154.406.
8. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
  - a. The right to challenge, in any forum, Order No. 2011-049;
  - b. Service upon Respondent of this Agreed Order;
  - c. Notice and hearing prior to imposition of an administrative penalty;
  - d. Review of this Agreed Order by the Texas Finance Commission, and 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 Order.
9. Respondent and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

### **ORDER**

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

10. Commissioner's Order No. 2011-049 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. 2011-049, this Agreed Order shall supersede the terms and conditions of Order No. 2011-049.

11. Respondent affirms that the illegal contract described in Paragraph 4 above is the only PFC that Respondent has sold. Respondent shall sell no future PFCs without first obtaining the required permit. Respondent shall not engage in any other activities that violate Texas Finance Code Chapter 154.
12. Respondent and the Department agree that an administrative penalty of \$2000.00 is appropriate, given the violations described in Paragraph 4. The administrative penalty of \$2000.00 shall be payable to the Department as follows: \$500.00 on or before the effective date of this Agreed Order, then \$200.00 per month, by the 15th day of each month, for seven months beginning September 15, 2011. A final payment of \$100.00 shall be due on April 15, 2012. All payments shall be paid by money order or cashier check.
13. This Order is effective on the date signed by the Commissioner.

Signed this 12th day of September, 2011.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Emmitt Lewis Jr.  
Emmitt Lewis Jr.

August 25, 2011  
Date

State of Texas           §  
                                  §  
County of Washington   §

Sworn to and subscribed before me on the 25th day of August, 2011, by Emmitt Lewis Jr.

/s/ Janet Daniel  
Notary Public's signature

APPROVED AS TO FORM:

/s/ Daniel Wood  
Daniel Wood  
Assistant General Counsel  
Texas Department of Banking

September 9, 2011  
Date