

ORDER NO. 2011-049

IN THE MATTER OF:	§	BEFORE:
	§	
EMMITT LEWIS, JR. dba	§	THE BANKING COMMISSIONER
	§	OF TEXAS
LEWIS FUNERAL HOME	§	
AND CHAPEL	§	
	§	
BRENHAM, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

EMERGENCY ORDER TO CEASE AND DESIST ACTIVITY,
AND TO SEIZE RECORDS AND FUNDS

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.

I. Findings

1. Respondent does not hold the permit required by Texas Finance Code § 154.101 to sell prepaid funeral benefits (“PFBs”) in Texas.
2. On March 1, 2011, the Texas Department of Banking (“Department”) received a consumer complaint from the Texas Funeral Service Commission, filed by FR concerning a prepaid funeral benefits contract (“PFBC”) sold by Respondent to FR’s mother, CR.¹ With the complaint the Department received copies of the PFBC between CR and Respondent entered into on December 12, 2010. The total contract price was indicated as \$9,585, for CR’s benefit. According to the complaint, prior to CR’s death, Respondent collected \$1,585 cash, and CR assigned to Respondent her right to the proceeds from two insurance policies totaling \$8,000. Respondent did not administer the collected funds as prescribed by Subchapters E and F of Texas Finance Code Chapter

¹ The purchaser of the PFBC and family members are referred to by initials to preserve privacy

154, as required by Texas Finance Code § 154.159. The complaint also states that Respondent collected an additional \$3,000 from CR's family at the time of her funeral in January, 2011. Respondent also collected \$3,000 in benefits from one of the assigned insurance policies, resulting in an overcharge to the family of \$3,000.

3. Based on the Department's experience in past cases, when a person has sold one PFBC without complying with the laws governing PFBCs, more illegal contracts come to light. Accordingly, by letter dated March 2, 2011, the Department demanded that Respondent disclose any additional PFBCs that were sold and outstanding, and submit a check for \$3,000 to reimburse the family. In response to the Department's demand, Respondent submitted \$3,000 for restitution, along with a copy of his license to sell insurance issued by the Texas Department of Insurance. However, Respondent ignored the Department's demands to disclose other outstanding illegal PFBCs or which licensed permit holders he was an agent for. Therefore the Department again demanded by letter dated March 31, 2011, that Respondent disclose by April 15, 2011, all outstanding PFBCs that might have been sold without a permit. To date, Respondent has ignored this demand.
4. The Commissioner finds that immediate or irreparable harm is threatened to the public or a beneficiary under a PFBC for the following reasons. Respondent has sold at least one illegal PFBC to the public, and for which money was not properly handled. Additionally, Respondent overcharged a consumer and refunded the overcharge only upon Department demand. Based on past cases involving illegal sale of PFBCs and because Respondent has held a license to sell insurance since 2004, it is likely that Respondent has sold other illegal PFBCs and may continue to do so.

II. Conclusions

5. The Commissioner is authorized by Texas Finance Code § 154.408 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 PFBCs, including a violation of Chapter 154, or a final order of the Commissioner, or a rule of the Finance Commission.
6. The Commissioner finds by credible evidence that Respondent has violated Texas Finance Code § 154.101 by selling a PFBC without the required permit.
7. The Commissioner finds this violation constitutes sufficient cause for issuance of an order to cease and desist from selling PFBCs under Texas Finance Code § 154.408.
8. The Commissioner is authorized by Texas Finance Code § 154.4081 to issue an emergency order that takes effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC. As stated in paragraph 4 above, the Commissioner finds that such harm is threatened.
9. The Commissioner is authorized by Texas Finance Code § 154.412 to issue an order seizing records and funds that relate to the sale of PFBCs if the Commissioner finds by examination or other credible evidence that the person:
 - a. Failed to deposit or remit money in accordance with the requirements of Chapter 154;
 - b. Misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a PFBC; or
 - c. Does not hold a permit.

10. The Commissioner finds by credible evidence that Respondent has committed the acts described in paragraph 9 (a)-(c) above.
11. The Commissioner finds this violation constitutes sufficient cause for issuance of an order to seize records and funds relating to PFBCs under Texas Finance Code § 154.412.
12. The Commissioner is authorized by Texas Finance Code § 154.412(c) to cause the seizure order to take immediate effect if the Commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a PFBC. For the reasons stated in paragraph 4, and because if Respondent has notice of the seizure order he might destroy records of other illegal contracts, the Commissioner finds that such harm is threatened.

III. Order

In accordance with Texas Finance Code §§ 154.408 and 154.4081, Respondent is ORDERED to cease and desist from engaging in the sale of any PFBCs.

In accordance with Texas Finance Code § 154.412, it is hereby further ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of the funds, contracts, and other records of Respondent that relate to the sale of PFBCs, wherever they may be located, held, or found, including the location of Lewis Funeral Home and Chapel in Brenham, Texas.

IV. Effective Date

Pursuant to Texas Finance Code §§ 154.4081 and 154.412(c) this Order to Cease and Desist Activity, and to Seize Records will take effect immediately.

V. Notice of Right to Hearing

Pursuant to Texas Finance Code §§ 154.4081(c) and 154.412(c-1), Respondent has the right to request in writing an opportunity for a hearing to show that the emergency order should be stayed.

VI. Service

This Order will be served on Emmitt Lewis, Jr. via personal service, and via certified mail, return receipt requested, to Emmitt Lewis, Jr., at 4010 E. Hwy. 105, Brenham, TX 77833.

Signed on this 5th day of May, 2011.

/s/Stephanie Newberg
Stephanie Newberg
Deputy Banking Commissioner