

ORDER NO. 2012-002

DOCKET NO. BE-11-11-266

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
BELLWOOD MEMORIAL PARK, INC.,	§	
DBA BELLWOOD MEMORIAL PARK	§	
AND MAUSOLEUM	§	
	§	
TEMPLE, TEXAS	§	COMMISSIONER OF TEXAS
(CERTIFICATE OF AUTHORITY NO. 175)	§	
	§	
AND	§	
	§	
RAY D. HARPER, INDIVIDUALLY	§	
AND AS SECRETARY AND TREASURER	§	
OF BELLWOOD MEMORIAL PARK, INC.	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of Bellwood Memorial Park, Inc., dba Bellwood Memorial Park and Mausoleum, Temple, Texas, and Ray D. Harper, Individually, and as secretary and treasurer of Bellwood Memorial Park, Inc. was submitted to the Banking Commissioner (Commissioner) of the State of Texas for consideration and action.

Findings:

1. Bellwood Memorial Park, Inc. dba Bellwood Memorial Park and Mausoleum (Bellwood) is a corporation located in Temple, Texas, operating a perpetual care cemetery (PCC) under certificate number 175. Bellwood's principal business address on file with the Texas Department of Banking (Department) is P.O. Box 547, Temple, Texas 76503; the physical address of Bellwood Memorial Park and Mausoleum is 8575 Airport Road, Temple, Texas 76504.
2. Ray D. Harper (Harper) is the secretary and treasurer of Bellwood Memorial Park, Inc. and is the cemetery manager.
3. Bellwood and Harper are jointly referred to as Respondents. Respondents have been properly notified regarding their right to an administrative hearing under Texas Health & Safety Code Chapter 712.

4. The Department has jurisdiction over Respondents and the subject matter of this proceeding. The Commissioner has the authority to issue this Agreed Order (Order) under Texas Government Code § 2001.056, and to assess administrative penalties pursuant to Texas Health & Safety Code § 712.0441.
5. The statutory and regulatory provisions at issue in the administrative hearing pending against Respondents include Texas Health & Safety Code §§ 712.008(a) and (b), 712.0441, and 712.0442, and 7 Texas Administrative Code (TAC) § 26.4(b).
6. Dan C. Harper is the president of Bellwood, and is duly authorized to execute this Order on behalf of Bellwood.
7. Any violation of this Order could subject Respondents to additional regulatory or enforcement actions authorized by Texas Health & Safety Code Chapter 712, Subchapter C. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Texas Health & Safety Code Chapter 712 or other applicable law, or restricts the Department from using past examinations of Bellwood to establish a pattern or practice of repeated violations of law in future proceedings.
8. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - a. Service upon Respondents of this Order;
 - b. the right to present defenses to the allegations;
 - c. notice and hearing prior to imposition of an administrative penalty by the Commissioner under Texas Health & Safety Code § 712.0441(a) for violation of Chapter 712, a rule adopted under Chapter 712, or an order of the Commissioner issued under Chapter 712;
 - 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 Texas Government Code § 2001.171 et seq., and any other challenge to the validity of this Order.

9. On July 15, 2009, Respondents sold GA a marker for his parents. This action violated Commissioner's Order No. 2008-023, which prohibits Bellwood from selling markers.
10. On August 15, 2011, AA, GA's sister, complained to the Department because the marker had still not been installed. AA stated that the marker was fully paid for in 2010.
11. Pursuant to 7 TAC § 26.4(b), a perpetual care cemetery must order a purchaser's burial marker within 21 days of the purchaser's paying the amounts due and approving the design of the marker.
12. After the Department forwarded a copy of AA's written complaint to Respondents, Respondents replied that the marker was installed on September 2, 2011, and concrete curbing was installed August 30, 2011.
13. AA verified that the marker had been installed, but that it lacked two emblems that she had ordered. On December 27, 2011, Harper sent the Department a photo of the marker, showing that the emblems had now been installed.
14. Harper has admitted in writing that Bellwood sold the marker in 2009 and did not order it timely.
15. Respondents have a history of violating Commissioner orders and the rules governing markers. In particular:
 - a. On August 26, 2008, the Commissioner ordered Bellwood to cease and desist from selling markers because it had taken funds from numerous consumers and not ordered their markers. This order became final on November 12, 2008.
 - b. On November 12, 2008, the Commissioner ordered Bellwood to pay \$23,000.00 as a penalty for its violations of the marker ordering and documentation rules. Bellwood paid that penalty.
 - c. In Bellwood's report of examination as of September 30, 2009, it was cited for having ordered a marker 81 days late.
 - d. In Bellwood's report of examination as of June 30, 2010, it was cited for having sold a marker in violation of Commissioner's Order No. 2008-023.

e. On May 23, 2011, Bellwood entered into Agreed Commissioner's Order No. 2011-050 in which Bellwood agreed to the following:

- (1) It violated 7 TAC § 26.4 because it ordered a marker 2 years and 10 months after it received payment for it, and the rule requires ordering within 21 days after payment.
- (2) It violated 7 TAC § 26.12(b) regarding consumer complaints because it did not respond to the person who ordered the marker until at least 87 days after it received his written complaint, and the rule requires a response within 30 days.
- (3) It would pay the Department a penalty of \$6,000.00.

16. Bellwood is paying the \$6,000.00 penalty in installments.
17. In Commissioner's Order No. 2011-050, the Commissioner ordered Bellwood to fully comply with the time limits and all other requirements of 7 TAC § 26.4.
18. Respondents agree to pay an administrative penalty in the amount of \$7,000.00 for the violations associated with the marker sold in 2009.
19. Respondents and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

Conclusions:

1. Respondents violated Commissioner's Order No. 2008-023, by selling GA a marker on July 15, 2009.
2. Respondents violated Commissioner's Order No. 2011-050 by failing to order the GA marker in accordance with the deadlines of 7 TAC § 26.4.
3. Respondents violated 7 TAC § 26.4 by failing to order the GA marker in accordance with the deadlines of 7 TAC § 26.4.
4. From 2008 to the present, Bellwood and Harper have established a pattern of violations, within the meaning of Texas Health and Safety Code § 712.0441(a)(2).
5. Respondents' actions establish a pattern of willful disregard for the requirements of the rules of the Finance Commission and orders issued by the Commissioner. It is appropriate to assess administrative penalties for engaging in a pattern of willful disregard pursuant to Texas Health and Safety Code § 712.0442.

ORDER

It is hereby ORDERED, ADJUDGED, and DECREED that:

1. Respondents shall not engage in activities in violation of Texas Health & Safety Code Chapter 712.
2. Respondents shall fully comply with the time limits and all other requirements of 7 TAC § 26.4.
3. Respondents are individually and severally liable for and shall pay the administrative penalty amount of \$7,000.00, to the Department as follows:
 - a. Respondents shall pay \$1,000.00 on May 1, 2012;
 - b. Respondents shall pay the remainder in monthly installments of \$500.00, beginning June 1, 2012, with succeeding payments due on the 1st of each month. If Respondent pays according to the terms of this Agreed Order, its final payment will be due May 1, 2013.
4. Failure to make a monthly payment by the 5th of the month shall cause the due date of the unpaid balance to be accelerated and immediately due and payable. Failure to pay the accelerated balance within thirty (30) days after receiving notice of default and acceleration from the Department will result in the referral of this matter to the Office of the Attorney General for collection.
5. 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 Respondents that come to the attention of the Department.
6. This Order against Respondents is effective on the date signed by the Commissioner, and subject to its terms, Respondents may not appeal.

Signed on this 9th day of January 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Dan C. Harper
Dan C. Harper
President
Bellwood Memorial Park, Inc.

January 5, 2012
Date

State of Texas (
County of Bell (

Sworn to and subscribed before me on the 5th day of January 2012, by Dan C. Harper.

/s/ Sue Capps
Notary Public's signature

/s/ Ray D. Harper
Ray D. Harper
Secretary/Treasurer
Bellwood Memorial Park, Inc.

January 5, 2012
Date

State of Texas (
County of Bell (

Sworn to and subscribed before me on the 5th day of January 2012, by Ray D. Harper.

/s/ Sue Capps
Notary Public's signature

/s/ Ray D. Harper
Ray D. Harper

January 5, 2012
Date

State of Texas (
County of Bell (

Sworn to and subscribed before me on the 5th day of January 2012, by Ray D. Harper.

/s/ Sue Capps
Notary Public's signature

APPROVED AS TO FORM:

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

January 9, 2012
Date