

ORDER NO. 2012-011

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
ANTIOCH ST. JOHN'S CEMETERY COMPANY	§	
DBA AMERICAN MEMORIAL PARK	§	
(CERTIFICATE OF AUTHORITY NO. 74)	§	
AND	§	COMMISSIONER OF TEXAS
GERALD WEATHERALL, SR., ITS PRESIDENT,	§	
AND	§	
BEVERLY RANDALL-WEATHERALL,	§	
ITS VICE-PRESIDENT	§	
	§	
GRAND PRAIRIE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

**EMERGENCY ORDER TO CEASE AND DESIST FROM OPERATING A PERPETUAL
CARE CEMETERY WITHOUT A VALID CERTIFICATE OF AUTHORITY AND
FROM VIOLATING TEXAS HEALTH AND SAFETY CODE**

On this day, the matter of Antioch St. John's Cemetery Company dba American Memorial Park (the Cemetery) located in Grand Prairie, Texas; Gerald Weatherall, Sr. (Weatherall); and Beverly Randall-Weatherall (Randall-Weatherall) was submitted to the Texas Banking Commissioner (Commissioner) for consideration and action.

I. Findings of Fact

1. The Cemetery is a perpetual care cemetery (PCC) operating under certificate of authority number 74. It is located in Grand Prairie, Texas. Weatherall is its president and chairman of the board of directors. Randall-Weatherall is its vice-president, a director, and a co-owner of the Cemetery. The Cemetery, Weatherall, and Randall-Weatherall are all collectively referred to as "Respondents."
2. The Texas Department of Banking (Department) regulates PCCs under the authority of Texas Health and Safety Code (Health Code) Chapters 711 and 712.
3. The Texas Finance Commission has issued rules governing PCCs, which are located primarily in 7 Texas Administrative Code (Administrative Code) Chapter 26.
4. Pursuant to Health Code Section 712.044(a), the Commissioner may examine PCCs on a periodic basis as he reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce Health Code Chapter 712.

5. On October 19, 2011, the Department sent its report of examination (ROE) to the Cemetery and Weatherall for the onsite examination conducted September 6, 2011, with analysis as of June 30, 2011. The following violations were cited in that ROE:
- a. violation of Administrative Code Section 26.2(b)(1)(A) for failing to maintain a financial statement that substantiates the Cemetery's use of trust fund income;
 - b. violation of Health Code Section 712.028(a) for failing to accurately calculate the amount of perpetual care funds to be deposited;
 - c. violation of Health Code Section 712.029(c) for failing to accurately deposit required perpetual care funds no later than the 20th day after the end of the month in which the original purchase agreement was paid in full;
 - d. violation of Health Code Section 712.029(a) for failing to disclose on the purchase agreements the correct amount of perpetual care funds to be deposited to the fund;
 - e. violation of Administrative Code Section 26.2(b)(5) for failing to maintain accurate monthly recapitulations of all interment rights issued;
 - f. violations of Health Code Sections 711.034(a)(1) and (b) and 711.038(a)(1) for selling cemetery property prior to filing accurate plat maps with the county clerk's office;
 - g. violations of Health Code Section 711.038(c) and Administrative Code Section 26.5 for failure to issue conveyance documents as required on paid-in-full cemetery property and to file those conveyance documents in the Cemetery office;
 - h. violation of Health Code Section 711.003(4) for failure to accurately identify the plot in which the remains are interred on the interment records of the Cemetery;
 - i. violation of Administrative Code Section 26.2(b)(4) of the Administrative Code for failing to record the final disposition of purchase agreements on the historical contract register as required; and

- j. violation of Administrative Code Section 26.2(b)(3) for failing to maintain separate property files in the names of the purchasers.
6. Respondents did not correct those violations by the 31st day after the date they received that ROE.
 7. The Department conducted a follow-up limited scope examination of the Cemetery commencing on February 7, 2012, which was performed with analysis as of December 31, 2011. The examination revealed that the Cemetery, Weatherall and Randall-Weatherall still had not corrected the violations stated in paragraph 5. Additionally, the Cemetery was cited for violation of Health Code Section 712.0037(a) for failure to maintain satisfactory financial condition.
 8. The Cemetery and Weatherall were given notice of this additional violation when the recent ROE was sent to them on April 30, 2012.
 9. Health Code Section 712.0032 requires a corporation to hold a certificate of authority to operate a perpetual care cemetery. The Cemetery's certificate was required to be renewed by March 1, 2012. See Health Code Section 712.0036. As a condition of renewal, a certificate holder must meet all the requirements that apply to a new applicant. Health Code Section 712.0037(a). Some of the conditions that apply to a new applicant are that it have the "business ability, experience, character, financial condition, and general fitness" to warrant the public's confidence. Health Code Section 712.0034(b)(1). Additionally, the issuance of the certificate of authority must be in the public interest. Health Code Section 712.0034(b)(3). The Cemetery's internally prepared financial statement as of December 31, 2011, reveals that it has a negative \$21,700.00 equity position. Therefore, the Cemetery does not have the financial condition to warrant issuance of a certificate of authority. For this reason, as well as the outstanding violations discussed in this Order, its certificate of authority was not renewed and the Cemetery is currently operating without a valid certificate of authority.
 10. Immediate and irreparable harm is threatened to the plot owners and persons who have loved ones buried in the cemetery because the Cemetery, Weatherall and Randall-Weatherall have taken no action to correct egregious violations, including burying persons in plots that are not accurately platted and failing to maintain records that accurately reflect where burials have taken place. Additionally, the Cemetery no longer has a valid certificate of authority to operate

a perpetual care cemetery. If the Cemetery, Weatherall and Randall-Weatherall are allowed to continue to sell plots and to operate the Cemetery as it has been operated, the general public as well as current plot owners could be immediately and irreparable harmed.

II. Conclusions

11. Pursuant to Health Code Section 712.0444, in the exercise of his regulatory power, the Commissioner may issue an emergency order that takes effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by Chapter 712.
12. Pursuant to Health Code Section 711.054, Commissioner may take this enforcement action for the cited violations of Health Code Chapter 711.
13. The Cemetery, Weatherall and Randall-Weatherall have violated the following sections of the Health Code: Sections 711.003(4), 711.034(a)(1) and (b), 711.038(a)(1) and (c), 712.028(a), 712.029(a) and (c), 712.0032, and 712.0037(a).
14. The Cemetery, Weatherall and Randall-Weatherall have violated the following rules of the Finance Commission of Texas: Administrative Code Sections 26.2(b)(1)(A), 26.2(b)(3), 26.2(b)(4), 26.2(b)(5), and 26.5.
15. These violations and the reasons recited above in paragraph 10 establish that immediate and irreparable harm is threatened and there is sufficient cause for the issuance of this cease and desist order with immediate effect.

III. Order

In accordance with Health Code Section 712.0444, and in the exercise of the regulatory power of the Texas Banking Commissioner, Respondents Antioch St. John's Cemetery Company dba American Memorial Park; Gerald Weatherall, Sr.; and Beverly Randall-Weatherall are ORDERED to immediately cease and desist from the sale of any cemetery spaces or interment rights in American Memorial Park until they have corrected all the violations cited in this Order and have received written confirmation from the Department that all such violations have been satisfactorily corrected.

It is further ORDERED that Respondents are ordered to cease and desist from all cemetery operations except for burials for persons who own plots as of the date of this order and except that Respondents shall continue to maintain the property and grounds of the Cemetery.

It is further ORDERED that if Respondents perform any burials as allowed under this Order, Respondents shall ensure that the burial occurs in a plot that is exclusively reserved for the use of the current owner and that all documentation that is required by the Health Code and the Administrative Code is properly completed and maintained. Respondents shall send copies of all such recorded documentation to the Texas Department of Banking within two business days of any such burials.

IV. Effective Dates

Pursuant to Health Code Section 712.0444, this Emergency Order to Cease and Desist from Operating a Perpetual Care Cemetery Without a Valid Certificate of Authority and from Violating Texas Health and Safety Code takes effect at the time and date indicated below. The order remains in effect unless stayed by the Commissioner.

V. Right to Hearing

Pursuant to Health Code Section 712.044(c), Respondents may request in writing, not later than the 18th day after the date the order is mailed, a hearing to show that the emergency order should be stayed.

VI. Service

This Order is served on Antioch St. John's Cemetery Company dba American Memorial Park, Gerald Weatherall, Sr., and Beverly Randall-Weatherall by certified mail, return receipt requested and first class mail, sent on May 17, 2012 to:

Mr. Gerald Weatherall, Sr.
Antioch/St. Johns Cemetery Company
P.O. Box 150423

Dallas, Texas 75315
Ms. Beverly Randall-Weatherall
Antioch/St. Johns Cemetery Company
P.O. Box 150423
Dallas, Texas 75315

It is also served on May 16, 2012 by email to _____, by facsimile to (214) 565-5054 and by personal service on Gerald Weatherall and Beverly Randall-Weatherall.

Signed on this 16th day of May, 2012 at 3:59 p.m.

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