

ORDER NO. 2012-015

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
CENTRAL TEXAS-KILLEEN MEMORIAL	§	
PARK, INC., CENTRAL TEXAS-LAKELAND	§	COMMISSIONER OF TEXAS
HILLS MEMORIAL PARK, INC. AND	§	
CENTRAL TEXAS-MT. ZION GARDEN	§	
OF MEMORIES, INC.	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, came on for consideration by Texas Banking Commissioner Charles G. Cooper (“Commissioner”) and the matter involving Central Texas-Killeen Memorial Park, Inc., Central Texas-Lakeland Hills Memorial Park, Inc. And Central Texas-Mt. Zion Garden Of Memories, Inc. (“Respondents”). This matter concerns Respondents’ operating perpetual care cemeteries (PCCs) without a valid certificate of authority in violation of Texas Health Code §712.003(c). Assistant General Counsel Deborah Loomis represent the Texas Department of Banking (“Department”). Respondents are represented by Philip B. Cannatti.

1. Respondents and the Department jointly request the Commissioner to dispose of this matter pursuant to the provisions of Texas Government Code § 2001.056 by entering this Agreed Order. Respondents and the Department stipulate to the facts found by the Commissioner and the parties agree to comply with the terms of this Agreed Order.
2. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Texas Health and Safety Code (Health Code) Chapter 712 and Texas Finance Code Chapter 35, Subchapter C.
3. Respondents operate the Killeen Memorial Park in Killeen, Texas, Lakeland Hills Memorial Park in Burnet, Texas, and Temple Garden of Memories in Temple, Texas.
4. Health Code §712.003(c) requires a corporation that is operating a PCC and is chartered after September 1, 1993, to have a minimum capital of \$75,000.00.
5. Health Code §712.0032 requires a corporation that is operating a PCC to have a certificate of authority issued by the Department.
6. Health Code §712.0034(b) states in part that to qualify for a certificate of authority, a PCC must demonstrate to the satisfaction of the Commissioner that the PCC’s financial condition and general fitness warrant the public’s confidence.

7. Health Code §712.0036 states that certificates of authority expire March 1 of each year and must be renewed.
8. Health Code §712.0037(a) states that, as a condition of renewal, a certificate holder must meet the requirements that apply to an applicant for a new certificate.
9. Respondents were chartered in March 2009.
10. Respondents violated Health Code §712.0037(a)(2) because they failed to submit by March 1, 2012, evidence that each PCC has \$75,000 in capital as required by Health Code §712.003(c) and the Department determined Respondents' financial conditions do not warrant the public's confidence as required by Health Code §712.0034(b)(1).
11. Because Respondents did not submit satisfactory renewal applications, the Commissioner, in accordance with Health Code §712.0037(c)(2), refused to renew Respondents' certificates of authority and is now requiring Respondents to enter into this order.
12. Respondents' certificates of authority expired March 1, 2012. Therefore, Respondents are in violation of Health Code §712.0032, which requires a corporation to hold a certificate of authority issued under Chapter 712. Because Respondents continue to operate PCCs, they are conducting "unauthorized activity" as defined by Finance Code §31.002(a)(56), and are subject to the enforcement provisions of Finance Code Chapter 35, Subchapter C.
13. Respondents admit that they have violated Health Code §712.0032 and §712.003(c).
14. On April 26, 2012, the Department sent Respondents written notice of these violations.
15. The Commissioner has the authority to issue this Agreed Order and to assess penalties pursuant to Health Code §712.0441 and to order Respondents to cease and desist pursuant to Health Code §712.0443 because the Commissioner finds that Respondents have violated Chapter 712 and the violations were not corrected 31 days after the person received written notice of the violations. Further, Texas Finance Code §35.207 authorizes the Commissioner to issue a cease and desist order against a PCC for conducting unauthorized cemetery activity. The imposition of an administrative penalty and the order to cease and desist are appropriate and reasonable given the seriousness of the violations.
16. Any violation of this Agreed Order could subject Respondents to additional regulatory or enforcement actions authorized by the Health Code Chapter 712, Subchapter C and Finance Code Chapter 35, Subchapter C. Nothing in this Agreed Order diminishes the regulatory or

enforcement powers of the Department or the Commissioner under the Health Code, the Finance Code, or other applicable law.

17. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - a. Service upon Respondents of this Agreed Order;
 - b. The right to present defenses to the allegations described herein;
 - c. Notice and hearing prior to imposition of the administrative penalties or an order to cease and desist as agreed upon in this Agreed Order;
 - 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; and,
 - g. 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 Agreed Order.
18. Respondents agree to pay an administrative penalty in the amounts set forth in paragraph number 5 of the Order, below.
19. Respondents agree to cease and desist from operating PCCs without valid certificates of authority from the Department in accordance with the terms of this Agreed Order, except that Respondents shall perform burials for persons who own plots in the cemetery and shall maintain the properties and grounds and shall continue to maintain the property and grounds to the extent that income from the Perpetual Care Fund permits. Respondents agree to discontinue selling grave spaces, niches, and crypts. The agreement to cease and desist is effective on the dates set out in paragraph 6 of the Order, below.
20. Respondents and the Department agree to the factual findings, legal conclusions, and terms and conditions of this Agreed Order.

ORDER

It is hereby ORDERED, ADJUDGED, and DECREED that

1. Respondents shall develop a capital infusion plan and/or plan detailing how the PCCs will satisfy the capital requirement set forth in Texas Health Code §712.003 and provide it to the

Department on or before September 30, 2012. The plan must be ratified by the PCCs' boards of directors and demonstrate and ensure that the PCCs will meet the requirements of Texas Health Code 712.003(c) no later than December 31, 2012.

2. Respondents shall provide monthly updates on Respondents' plan to have the PCCs meet the capital requirements set forth in Texas Health Code §712.003 beginning July 31, 2012, and on the last day of each month thereafter.
3. Respondents shall provide their balance sheets and income statements as of December 31, 2012, to the Department no later than March 1, 2013.
4. Respondents shall submit any outstanding items regarding the certificates of authority renewal applications, other than the financial statements, within five days of the date this Agreed Order is signed by the Commissioner.
5. Respondents shall pay the administrative penalty amount of \$18,000 to the Department on March 15, 2013, unless Respondents can demonstrate by March 1, 2013, that the capital requirement of \$75,000 for each corporation operating a PCC has been met no later than December 31, 2012. If the Department deems that the capital requirements are met by December 31, 2012, the penalty amount for the violations will be reduced to \$5,000 and will be due March 31, 2013.
6. If by March 1, 2013, Respondents have not provided financial statements dated no later than December 31, 2012, that demonstrate to the satisfaction of the Department that the capital requirement of \$75,000 for each corporation operating a PCC has been met as required, Respondents shall on March 1, 2013, cease and desist from PCC operations, except that Respondents shall continue to perform burials for persons who own plots in the cemeteries as of February 28, 2013, and shall continue to maintain the properties and grounds to the extent that income from the Perpetual Care Funds permit.
7. Respondents are required to continue to comply with all other applicable statutes and rules.
8. 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.
9. This Order against Respondents is effective on the date signed by the Commissioner, and in accordance with its terms, Respondents may not appeal.

Signed in Austin, Texas, on this 9th day of July, 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

Central Texas-Killeen Memorial Park, Inc.

By: /s/ Robert C. Lomison
Printed Name: Robert C. Lomison
Title: President
Date: July 6, 2012

State of Texas §
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County of Dallas §

Sworn to and subscribed before me on the 6th day of July 2012, by Robert C. Lomison.

/s/ Maria Islas
Notary Public's signature

Central Texas-Lakeland Hills Memorial Park, Inc.

By: /s/ Robert C. Lomison
Printed Name: Robert C. Lomison
Title: President
Date: July 6, 2012

State of Texas §
 §
County of Dallas §

Sworn to and subscribed before me on the 6th day of July 2012, by Robert C. Lomison.

/s/ Maria Islas
Notary Public's signature

Central Texas-Mt. Zion Garden of Memories, Inc.

By: /s/ Robert C. Lomison
Printed Name: Robert C. Lomison
Title: President
Date: July 6, 2012

State of Texas §
 §
County of Dallas §

Sworn to and subscribed before me on the 6th day of July 2012, by Robert C. Lomison.

/s/ Maria Islas
Notary Public's signature

APPROVED AS TO FORM:

/s/ Phillip E. Cannatti
Phillip E. Cannatti
Attorney for Respondents

July 6, 2012
Date

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

July 10, 2012
Date