

ORDER NO. 2012-022

DOCKET NO. BE-12-12-106

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
TYLER ESSER, INDIVIDUALLY AND AS	§	
OWNER OF ALL FAITHS FUNERAL	§	
SERVICES OF HOUSTON	§	
AND	§	COMMISSIONER OF TEXAS
FRED ESSER, INDIVIDUALLY AND AS	§	
GENERAL MANAGER OF ALL FAITHS	§	
FUNERAL SERVICES OF HOUSTON	§	
	§	
HOUSTON, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

AGREED ORDER

On this day, the matter of Tyler Esser, individually and as owner of All Faiths Funeral Services of Houston, and Fred Esser, individually and as General Manager of All Faiths Funeral Services of Houston, Houston, Texas (Respondents) was submitted to me, Charles G. Cooper, Banking Commissioner ("Commissioner") for consideration and action. Respondents and the Texas Department of Banking ("Department") have entered into an agreement and jointly request the Commissioner to dispose of this matter pursuant to § 2001.056, Texas Government Code. Respondents and the Department agree that the Commissioner may make the following Findings of Fact and Conclusions of Law and enter this Agreed Order ("Order") and agree to the terms of the Order.

I. Findings of Fact

The Commissioner makes the following Findings of Fact:

1. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to Chapter 154, Texas Finance Code, and §§ 2001.171 et seq, Texas Government Code.
2. Respondent, Tyler Esser, is the owner of and does business as All Faiths Funeral Services of Houston, Houston, Texas.
3. Respondent, Fred Esser, is the General Manager of All Faiths Funeral Services of Houston, Houston, Texas.

4. All Faiths Funeral Services of Houston has never held a permit required by § 154.101, Texas Finance Code, to sell prepaid funeral benefits contracts (PFBCs).
5. On April 16, 2012, the Department received a complaint letter from GEJ.¹ GEJ stated that he purchased a PFBC for his brother, ECJ, on or about September 29, 2011, in the amount of \$1,295.00 from All Faiths Funeral Services of Houston.
6. Respondent, Fred Esser, signed and sold a PFBC to GEJ using an at-need contract form.
7. Since the purchase of the PFBC, ECJ moved to Kerrville, Texas, which prompted GEJ to cancel the PFBC and request a refund of funds paid to All Faiths Funeral Services of Houston.
8. Respondent, Fred Esser, acknowledged GEJ's cancellation request on March 27, 2012.
9. Respondents have not refunded GEJ's \$1,295.00.
10. In addition, documents obtained from Respondents by the Texas Funeral Services Commission reveal that Respondent, Fred Esser, signed and sold a PFBC to GA1, on or about April 22, 2011, in the amount of \$1,295.00.
11. On or about May 1, 2012, the Respondents notified the Texas Funeral Services Commission that they are going out of business in May, 2012.

II. Conclusions of Law

Based upon the foregoing Findings of Fact, the Commissioner makes the following Conclusions of Law:

1. The Commissioner has the authority to issue this Order pursuant to § 154.411, Texas Finance Code.
2. The Commissioner has the authority to issue this Order and to assess penalties pursuant to §§ 154.406 and 154.4061, Texas Finance Code.
3. Respondents have agreed to pay restitution in the amount of Two Thousand Five Hundred Ninety 00/100 Dollars (\$2,590.00), an administrative penalty in the amount of Two Thousand 00/100 Dollars (\$2,000.00), and court costs in the amount of One Hundred Fifty 00/100 Dollars (\$150.00).
4. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - a. Service upon Respondents of this Order;

¹ The Department does not state the full names of PFBC purchasers to protect the privacy of the purchaser.

- b. The right to present defenses to the allegations;
 - c. Notice and hearing prior to imposition of an administrative penalty and an order for restitution;
 - 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 §§ 2001.171 et seq., Texas Government Code, and any other challenge to the validity of this Order.
5. Nothing in this Agreed Order shall be deemed to diminish or restrict the regulatory or enforcement power of the Department, the Commissioner, the Finance Commission of Texas, or the Texas Funeral Services Commission to take further action in this matter.

III. Order

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner ORDERS that this matter is hereby resolved in accordance with the following terms:

1. Respondents are ORDERED to comply with the provisions of Commissioner's Order No. 2012-010 issued May 10, 2012, that ordered Respondents to cease and desist from engaging in the sale of any prepaid funeral benefits contracts without proper authorization under Texas Finance Code Chapter 154.
2. Respondents are ORDERED to pay restitution in the amount of Two Thousand Five Hundred Ninety 00/100 Dollars (\$2,590.00), an administrative penalty in the amount of Two Thousand 00/100 Dollars (\$2,000.00) for the above referenced violations of §§ 154.101, 154.159, 154.203, 154.253, 154.406, 154.408, and 154.411, Texas Finance Code, and court costs, including cost of service, in the amount of One hundred fifty 00/100 Dollars (\$150.00). The schedule for payment for restitution and the administrative penalty for the total amount of Four Thousand Seven Hundred Forty and 00/100 Dollars (\$4,740.00) shall be as follows:

- a. \$2,590.00 is due and payable on September 1, 2012.
 - b. The remainder \$2,150.00 is to be paid in two monthly installments of \$1,075.00 per month beginning on October 1, 2012.
 - c. 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.
3. Respondents are ORDERED to cease the sale of any new prepaid funeral contracts.
 4. 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.
 5. This Order against Respondents is effective on the date signed by the Commissioner, and subject to its terms, Respondents may not appeal.

The effective date of this Order is the date the Order is signed by the Commissioner.

Signed this 7th day of August, 2012.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

All Faiths Funeral Services of Houston

/s/ Tyler Esser
Tyler Esser
Owner

State of Texas (
 (
County of _____(

Sworn to and subscribed before me on the 7th day of August, 2012, by Tyler Esser.

/s/ Laura Hardin
Notary Public's signature

All Faiths Funeral Services of Houston

/s/ Fred Esser
Fred Esser
General Manager

State of Texas (
 (
County of _____(

Sworn to and subscribed before me on the 7th day of August, 2012, by Fred Esser.

/s/ Laura Hardin
Notary Public's signature

APPROVED AS TO FORM:

Texas Department of Banking
/s/ Robert Giddings
Robert Giddings
Assistant General Counsel