

ORDER NO. 2013-016

IN THE MATTER OF: § **BEFORE THE BANKING**
§
TERRY WASHINGTON D/B/A WASHINGTON §
MEMORIAL FUNERAL HOME § **COMMISSIONER OF TEXAS**
(PREPAID FUNERAL SELLER PERMIT NO. 681) §
§
DALLAS, TEXAS § **AUSTIN, TRAVIS COUNTY, TEXAS**

EMERGENCY ORDER TO SEIZE PREPAID FUNERAL MONEY AND RECORDS

On this day, the matter of Terry Washington (Washington) d/b/a Washington Memorial Funeral Home located in Dallas, Texas, was submitted to the Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

I. Findings of Fact

1. Washington has been doing business as Washington Memorial Funeral Home, 1950 Canada Drive, Dallas, Texas 75212. The funeral home is now closed.
2. Washington is a licensed funeral director. According to the records of the Texas Funeral Service Commission, his address is 305 NW 13th Street, Grand Prairie, Texas 75050.
3. Washington held a prepaid funeral benefits permit to sell trust-funded prepaid funeral benefit contracts (PFBCs) issued by the Texas Department of Banking (Department) pursuant to Texas Finance Code § 154.103. Such permits are issued for a one year period. Texas Finance Code § 154.104.
4. Washington's permit expired on June 1, 2013, and Washington does not now hold a permit.
5. Washington still has approximately 22 trust-funded prepaid funeral benefit contracts that have not been discharged.
6. The prepaid funeral funds that Washington received are located in account number _____ (the "Bank Account") at Bank of America, Northwest Oak Cliff Branch, 2130 Fort Worth Avenue, Dallas, Texas 75211. As of February 28, 2013, the funds in that account totaled \$7,524.18.
7. The Bank Account is not properly styled as a restricted prepaid funeral account and the Bank Account has not been approved by the Department to hold prepaid funeral funds. Additionally, Washington has a debit card for the Bank Account.
8. Texas Finance Code Chapter 154 imposes requirements on the withdrawal of prepaid funeral trust funds from a bank account: §§ 154.261 to 154.263 state when a permit holder may

withdraw earnings from the account; § 154.262 states when a permit holder may withdraw principal upon the death of a beneficiary; and § 154.262(1)(4) sets forth documents that must be presented to the depository in order for it to release the money to the permit holder.

9. The Department placed Washington's permit on restricted status effective July 6, 2011, due to his failure to submit financial statements with his renewal application that was due June 1, 2011. Restricted status means that the permit holder is no longer allowed to sell prepaid funeral benefits. Nevertheless, pursuant to Texas Finance Code § 154.107, a permit holder such as Washington who has outstanding PFBCs is required to renew his permit until all PFBCs are fully discharged.
10. On April 1, 2013, the Department examined Washington's prepaid funeral business with a financial analysis as of February 28, 2013. The examination revealed that on November 14, 2012, Washington had withdrawn all the restricted prepaid funeral funds from the previously approved depository, Chase Bank, N.A. without required approval. On November 29, 2012, Washington deposited the funds into the Bank Account.
11. On May 17, 2013, the Department mailed Washington the report of the February 28, 2013, examination. The report cited a violation for the depositing of the prepaid funeral funds into an unrestricted account. The Department directed Washington to correct the violations immediately and to send the Department documentation, by June 21, 2013, that the funds were in a restricted account and that the debit card had been destroyed.
12. The report of examination was returned to the Department on June 21, 2013, marked "Address Not Known" by the postal service.
13. On June 4, 2013, the Department gave Washington written notice that his permit had expired June 1, 2013. It informed him that, absent an urgent situation, the Department would refrain from taking enforcement action against Washington if he submitted his renewal application by July 5, 2013. Washington signed a receipt for this letter on June 7, 2013.
14. Washington failed to submit his renewal application as demanded.
15. The Department attempted to contact Washington on June 24, June 25, July 2, and July 11, 2013 through voice mail, email, and a personal visit to the funeral home. Washington did not respond to any of these attempts. On July 15, 2013, the Department was called by a person whose aunt has a prepaid funeral contract with Washington and who was concerned because the funeral home appeared to be abandoned. On July 16, 2013, the Department contacted the

Texas Funeral Service Commission (FSC) to alert that agency to the situation and to determine if FSC had any information about the funeral home's status. On July 17, 2013, an inspector for the FSC went to the funeral home and discovered that it was empty and all furniture had been removed.

16. The Commissioner finds that immediate or irreparable harm is threatened to the public or a beneficiary under a PFBC for the following reasons. Washington has abandoned his funeral home. Washington is not responding to attempts by the Department to contact him. Washington has the ability to easily remove the prepaid funeral funds from the Bank Account via his debit card. In November 2012, Washington withdrew all the prepaid funeral funds from an approved depository and, two weeks later, deposited them in an unapproved, unrestricted account.
17. The Department believes the records that relate to the sale of PFBCs are located either at the funeral home location at 1950 Canada Drive, Dallas, Texas 75212 or at Washington's address on file with the Texas Funeral Service Commission, which is 305 NW 13th Street, Grand Prairie, Texas 75050.

II. Conclusions

1. The Commissioner is authorized by Texas Finance Code § 154.412(a) to issue an order seizing accounts in which prepaid funeral funds, including earnings, may be held and may issue an order to seize the records that relate to the sale of prepaid funeral benefits if the Commissioner finds by examination and other credible evidence that the person, among other things, did either of the following:
 - a. Failed to deposit or remit money in accordance with the requirements of Chapter 154; or
 - b. does not hold a permit.
2. The Commissioner finds by credible evidence that Washington fits the criteria listed in the previous paragraph.
3. The Commissioner finds these violations constitute sufficient cause for issuance of an order to seize prepaid funeral records under Texas Finance Code § 154.412.
4. 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 findings of fact numbers 4 to 15, the Commissioner finds that such harm is threatened.

III. Order

In accordance with Texas Finance Code § 154.412, it is hereby ORDERED that the Texas Department of Banking is authorized to immediately seize and take possession of the contracts and other records of Washington that relate to the sale of prepaid funeral benefits, wherever they may be located, held, or found, including the funeral home location at 1950 Canada Drive, Dallas, Texas 75212 or at Washington's address on file with the Texas Funeral Service Commission, which is 305 NW 13th Street, Grand Prairie, Texas 75050.

In accordance with Texas Finance Code § 154.412, it is hereby further ORDERED that all funds located in account number _____ at Bank of America, Northwest Oak Cliff Branch, 2130 Fort Worth Avenue, Dallas, Texas 75211 are hereby seized.

IV. Effective Date

Pursuant to Texas Finance Code §§ 154.4081 and 154.412(c) this Emergency Order to Seize Prepaid Funeral Money and Records will take effect immediately.

V. Notice of Right to Hearing

Pursuant to Texas Finance Code §§ 154.4081(c) and 154.412(c-1), Washington 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 Terry Washington via first class mail and certified mail, return receipt requested, sent on the 25th day of July, 2013, to the following address:

Terry Washington
dba Washington Memorial Funeral Home
1950 Canada Drive
Dallas, Texas 75212

This Order will be served on Terry Washington via certified mail, return receipt requested, sent on the 25th of July, 2013, and by personal service to the following address:

Terry Washington
305 NW 13th Street
Grand Prairie, Texas 75050

Signed on this 25th day of July, 2013.

/s/ Stephanie Newberg
for Charles G. Cooper
Texas Banking Commissioner