

Order No. 2018-018

Docket No. BF-1803-18-049

IN THE MATTER OF	§	BEFORE THE BANKING
BELLWOOD MEMORIAL PARK	§	
	§	
d/b/a	§	COMMISSIONER OF TEXAS
	§	
BELLWOOD MEMORIAL PARK	§	
AND MAUSOLEUM	§	AUSTIN, TRAVIS COUNTY, TEXAS

FINAL ORDER

The Banking Commissioner of Texas, after review and consideration of the attached Proposal for Decision issued by the Administrative Law Judge on May 7, 2018, and the Findings of fact and Conclusions of Law contained therein, hereby accepts and adopts the Findings of Fact and Conclusions of Law as his own.

The Commissioner further finds that an administrative penalty in the amount of \$35,000.00 is reasonable and appropriate after considering the facts of this case, the factors set forth in Texas Health and Safety Code Section 712.0441 for determining the amount of a penalty, and the recommendations of the department staff and the administrative law judge.

IT IS, THEREFORE, ORDERED that an administrative penalty in the amount of \$35,000.00 be and is hereby ASSESSED against Bellwood Memorial Park d/b/a Bellwood Memorial Park and Mausoleum, operating under Certificate of Authority No. 175 in Temple, Texas.

ACCORDINGLY, IT IS ORDERED that Bellwood Memorial Park d/b/a Bellwood Memorial Park and Mausoleum pay an administrative penalty in the amount of \$35,000.00 to the Texas Department of Banking.

All relief that was requested but not granted or otherwise disposed of herein is denied.
SIGNED and ENTERED this 10th day of July, 2018.

/s/ Charles G. Cooper
Charles G. Cooper, Commissioner
Texas Department of Banking

IN THE MATTER OF	§	BEFORE THE BANKING
	§	
BELLWOOD MEMORIAL PARK	§	
	§	
d/b/a	§	COMMISSIONER OF TEXAS
	§	
BELLWOOD MEMORIAL	§	
PARK AND MAUSOLEUM	§	AUSTIN, TRAVIS COUNTY, TEXAS

PROPOSAL FOR DECISION

This Proposal for Decision is issued following consideration of the record from a contested case hearing that was conducted on April 19, 2018.

STATEMENT OF THE CASE

This is an enforcement action against Bellwood Memorial Park d/b/a Bellwood Memorial Park and Mausoleum, Temple, Texas, ("Respondent") concerning charges of violations of Texas Health and Safety Code Chapter 712, Subchapter B, which the staff of the Department of Banking initiated. The charges are set forth in the Notice of Hearing signed on March 22, 2018.

Appearances

The Respondent did not appear at the hearing.

Department staff was represented by Cristina Nahidi, Assistant General Counsel. Jesus (Jesse) Saucillo, Financial Examiner, testified on behalf of the staff.

Applicable Law

Texas Health and Safety Code Chapter 712, Subchapters A, B, and B-1 have the requirements for the operation of perpetual care cemeteries in Texas, which include the requirement to obtain a Certificate of Authority to operate a perpetual care cemetery, the requirement to establish a Perpetual Care Trust Fund, and the requirements for funding and operation of the Perpetual Care Trust Fund. Texas Health and Safety Code Chapter 712, Subchapter C, authorizes the assessment of administrative penalties for violations of the

requirements of Subchapters A, B, and B-1, and includes the criteria for the amount of administrative penalties that may be assessed.

Discussion

Respondent operates a perpetual care cemetery under Certificate of Authority No. 175, issued under Texas Health and Safety Code Chapter 712. Respondent established a Perpetual Care Trust Fund that is associated with the perpetual care cemetery.

Exhibits 1-14 were admitted into evidence. The evidence shows that the Respondent was given notice of hearing more than 20 days before the hearing was set to commence. Four Reports of Examination covering operations between January 1, 2014, and December 31, 2017, show the Respondent's repeated and continuing failure to timely deposit the required amounts of funds into the Perpetual Care Trust Fund. Over time, the Respondent deposited the required amounts of funds into the Perpetual Care Trust Fund, eventually meeting its statutory requirement as to the amount of funds to be deposited. The evidence also shows that the Respondent knew the legal requirements of how much money was required to be deposited into the Perpetual Care Trust Fund and the deadlines for making the deposits. The evidence also supports a conclusion that the Respondent's continuing and repeated failure to timely deposit the required funds constitutes a pattern of violation.

Department staff recommended an administrative penalty in the amount of \$35,000.00.

FINDINGS OF FACT

Based on all of the evidence of record and applicable law, the Administrative Law Judge makes the following findings of fact and conclusions of law.

1. Bellwood Memorial Park d/b/a Bellwood Memorial Park and Mausoleum, ("Respondent") is a corporation that operates a perpetual care cemetery in Temple, Texas, under Certificate of Authority No. 175.
2. Notice of Hearing [Exhibit I], which set the date and time of hearing to be 9:00a.m. on April 19, 2018, was sent on March 23, 2018, and delivered to the Respondent on March 26, 2018, and another Notice of Hearing was delivered on April 3, 2018. Exhibit Nos. 2 and 3.

3. Respondent failed to appear at the hearing on April 19,2018.
4. Respondent established a Perpetual Care Trust Fund in conjunction with the perpetual care cemetery that it operates under Certificate of Authority 175.
5. The Respondent failed to timely deposit funds in the amounts required under Health and Safety Code Section 712.029 for many days on multiple occasions for 35 months during the period from January 1, 2014, through December 31,2017. Exhibit Nos. 4, 5, 6, and 7.
 - a. Respondent did not make perpetual care deposits into the Perpetual Care Trust Fund within 20 days after the end of the months of August, October, and December, 2017, which were due for the original purchase agreements that were paid in full during those months. Exhibit No. 4.
 - b. Respondent did not make perpetual care deposits into the Perpetual Care Trust Fund within 20 days after the end of the months of June, August, September and November, 2016, and January, February, March, April, and May, 2017, which were due for the original purchase agreements that were paid in full during those months. Exhibit No.5.
 - c. Respondent did not make perpetual care deposits into the Perpetual Care Trust Fund within 20 days after the end of the months of September, November, and December, 2015, and January, February and May, 2016, which were due for the original purchase agreements that were paid in full during those months. Exhibit No.6.
 - d. Respondent did not make perpetual care deposits into the Perpetual Care Trust Fund within 20 days after the end of 17 out of the 18 months in the examination period of January 1, 2014, through June 30, 2015, which were due for the original purchase agreements that were paid in full during those months. Exhibit No.7.
6. Respondent failed to make the required deposits as set forth in Finding of Fact No. 5 for many more than 300 days after the deposits were due. Exhibit Nos. 4, 5, 6, and 7.
7. Respondent's failures to timely make deposits to the Perpetual Care Trust Fund, which are shown in Finding of Fact No. 5, were knowing, willful, or both knowing and

willful, because the Respondent told the Department examiner in each of the referenced four examinations that the failures were due to negligence, other priorities, or lack of attention or attentiveness. Exhibit Nos. 4, 5, 6, and 7.

8. Respondent engaged in a pattern of violations by its continuing and repeated failures to make perpetual care deposits to the Perpetual Care Trust Fund within 20 days after the end of 35 months during the period between January 1, 2014, and December 31, 2017, which were due for the original purchase agreements that were paid in full in each of those 35 months that are identified in Finding of Fact No. 5.
9. Although not made within the statutorily-required deadlines, the Respondent has made perpetual care deposits to the Perpetual Care Trust Fund which have made up the shortages caused by its failures to timely deposit perpetual care funds.
10. Respondent has a history of violations of Health and Safety Code Section 712 and Finance Commission Rules concerning perpetual care cemeteries, which is evidenced by four Commissioner orders signed on 10/22/08, 11/12/08, 5/25/11, and 1/5/12. Exhibits Nos. 8, 9, 10, 11, 12, and 13.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to the Respondent.
2. The Commissioner of Banking has jurisdiction of this matter to enforce the provisions of the Texas Health and Safety Code that require deposits of perpetual care funds and, in particular, concerning the Perpetual Care Trust Fund that is associated with the perpetual care cemetery that the Respondent operates under Certificate of Authority 175.
3. Respondent violated Health and Safety Code Section 712.029(c) by failing to deposit the required amount of funds into the Perpetual Care Trust Fund within 20 days after the end of each month in which original purchase agreements were paid in full, for 35 out of 48 months during the period from January 1, 2014 and December 31, 2017.
4. Respondent engaged in a pattern of violations of Health and Safety Code Section 712.029(c) during the period from January 1, 2014, through December 31, 2017.

5. The Commissioner of Banking, in his discretion, has the authority under Health and Safety Code Section 712.0441 to assess an administrative penalty in an amount up to \$1,000 for each day of violation of Health and Safety Code Section 712.029(c).
6. Giving consideration of the factors for determining the amount of an administrative penalty that are set forth in Health and Safety Code Section 712.0441(c), an administrative penalty against Bellwood Memorial Park in the amount of \$35,000.00 is reasonable for the violations of Health and Safety Code Section 712.029(c) that are found in Conclusion of Law No. 3.

RECOMMENDATION

As Administrative Law Judge, I recommend an order that adopts the foregoing Findings of Fact and Conclusions of Law, and that assesses an administrative penalty in the amount of \$35,000.00.

Respectfully submitted,

/s/ Donald N. Walker
Administrative Law Judge

SIGNED: May 7, 2018