

ORDER NO. 2018-032

IN THE MATTER OF:	§	BEFORE:
	§	
BILLY F. PEEL, INDIVIDUALLY AND AS PRESIDENT OF AUSTIN PEEL AND SON FUNERAL HOME, INC.	§	
	§	
AND	§	THE BANKING
	§	COMMISSIONER OF TEXAS
	§	
AUSTIN PEEL AND SON FUNERAL HOME, INC.	§	
	§	
	§	
AUSTIN, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of Billy F. Peel, individually and as President of Austin Peel and Son Funeral Home, Inc., and Austin Peel and Son Funeral Home, Inc. (“APS”), Austin, Texas (collectively “Respondents”), was submitted to the Texas Banking Commissioner (“Commissioner”) for consideration and action. This matter concerns payment of restitution by and assessment of administrative penalties against Respondents relating to violations of *Texas Finance Code* Chapter 154 as described below. In lieu of the scheduled hearing, the Texas Department of Banking (“Department”) and Respondents wish to enter an agreement regarding the restitution, penalties, and other terms as provided in this Agreed Order (“Order”).

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 issuing this Order. Respondents and the Department agree to comply with the terms of this Order.
2. Respondent APS’s undersigned representative has full authority to enter into and bind Respondent APS to the terms and conditions of this Order.
3. Respondents acknowledge that the Commissioner has jurisdiction over this matter pursuant to *Texas Finance Code* Chapter 154 and *Texas Government Code* §§2001.171 et seq., and

that the Commissioner has the authority to issue this Order under *Texas Government Code* §2001.056.

4. Respondents have been notified of the right to a hearing on the matter of administrative penalties under *Texas Finance Code* §154.406, and on the matter of restitution under *Texas Finance Code* §154.411.
5. For purposes of this proceeding, Respondents knowingly and voluntarily waive:
 - a. service upon Respondents of this Order;
 - b. the right to present defenses to the allegations in this proceeding;
 - c. notice and hearing prior to imposition of this 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;
 - g. any review of this Order by the Texas Finance Commission; and
 - h. judicial review of this Order as provided by *Texas Government Code* §2001.171 et seq., and any other challenge to the validity of this Order.
6. Respondent Billy F. Peel is President and owner of Austin Peel and Son Funeral Home, Inc. (a.k.a. “Austin-Peel and Son Funeral Home, Inc.”), doing business as Austin Peel and Son Funeral Home (a.k.a. “Austin-Peel and Son Funeral Home”) in Austin, Texas.
7. Respondents do not currently hold the permit required by *Texas Finance Code* §154.101 to sell prepaid funeral benefits and collect money for prepaid funeral benefits. Respondent APS formerly held a permit issued by the Department. In March 2006, Respondent APS’s permit expired for failure to renew.
8. On August 1, 2018, the Commissioner issued Order No. 2018-019, *Emergency Order to Cease and Desist Activity, and to Seize Records and Funds*. Order No. 2018-019 was based

on findings that Respondents violated several sections of *Texas Finance Code* Chapter 154 with respect to two trust-funded prepaid funeral contracts (“PFCs”). Specifically, the Commissioner found that Respondents had failed to properly handle payments received for these PFCs and failed to maintain proper records relating to the PFCs. Order No. 2018-019 ordered Respondents to: 1) cease and desist all sales of prepaid funeral benefits and the collection of associated funds and 2) authorized the Department to seize all prepaid funeral records and related trust funds. Respondents did not request a hearing as provided by *Texas Finance Code* §154.4081(c) and §154.412(c-1) to show that Order No. 2018-019 should be stayed. Order No. 2018-019 therefore remains in force.

9. Pursuant to Order No. 2018-019, the Department seized Respondents’ prepaid funeral records and related trust funds. After reviewing the seized records, the Department attempted to contact consumers based on information contained in the files. In many cases, the Department received further information or documentation from purchasers of prepaid funeral benefits or their families. Additionally, following the seizure, the Department published a notice in a local newspaper regarding the seizure. Because of the notice, numerous people contacted the Department regarding previously unreported contracts which were not contained in the seized records.
10. From the seized files and the documentation received from consumers, the Department identified at least 240 PFCs that violated *Texas Finance Code* Chapter 154. Additional violations also occurred after the entry of Emergency Order No. 2018-019, as Respondents both sold a new PFC and collected money for prepaid funeral benefits, in direct violation of that Order.
11. Respondents violated *Texas Finance Code* Chapter 154 *each time* when, without a Department license, they sold a prepaid funeral contract, collected money for prepaid

funeral benefits, and failed to deposit the money collected in trust in the manner required by statute.

12. The Department calculated the total amount of principal funds that were required to be on deposit, subtracted the appropriate seized funds, and determined that \$524,780.38 of restitution must be paid (“Final Restitution”). Respondents have had an opportunity to review the Department’s materials and are satisfied that this amount is correct.
13. In addition to restitution, the Commissioner has determined that given the nature of the violations of *Texas Finance Code* Chapter 154 in this matter, an administrative penalty is appropriate. *Texas Finance Code* §154.406 authorizes the Commissioner to assess administrative penalties, the amount of which may not exceed \$1,000 per violation, per day the violation occurs. The parties agree that although the maximum amount authorized by the statute would be many times greater, the imposition of an administrative penalty against Respondent Billy F. Peel in the amount of \$520,000.00 is appropriate and reasonable given the nature of the violations cited above. However, if certain conditions are met, the penalty may be discounted. The conditions and full payment terms are described in Paragraph 16 below.
14. Respondents agree to pay the Final Restitution by February 15, 2019. Respondent shall pay the amount due by wire transfer, money order, or cashier check, payable to the Texas Department of Banking.
15. Respondents agree that until the Final Restitution is paid in full, they shall continue to honor the PFCs written by them as they become due and owing and will provide written documentation to the Department to substantiate that each PFC was honored. Such documentation must be signed by an immediate member of the deceased’s family and must contain the following information: 1) the deceased’s full legal name; 2) the full name of

the immediate family member attesting to the performance of the contract; and 3) the telephone number, address and email address of such immediate family member. If these conditions are met and the Department can verify that such contract was fully performed, the Department will agree to offset the Final Restitution amount due and owing by Respondents by the contract amount honored by Respondents on or before February 15, 2019.

16. Respondents agree to pay a penalty of \$520,000.00 (“Default Penalty”) that may be discounted based on how quickly Respondents complete payment of the Final Restitution and the administrative penalty. The final amount of the administrative penalty will be determined according to the terms:

a. If Respondents fail to complete payment of the Final Restitution by February 15, 2019, the Final Restitution and Default Penalty shall be immediately due and payable.

If Respondents complete payment in full of the Final Restitution by February 15, 2019, the Default Penalty shall be discounted to \$250,000 (“Reduced Penalty”). Respondents shall pay the entire Reduced Penalty amount by wire transfer, money order, or cashier check on or before April 15, 2019.

b. If the Final Restitution, Default Penalty, the Reduced Penalty, or installment payment of the Reduced Penalty becomes due and payable under this Order and is not paid within thirty (30) calendar days of the due date, this matter will be referred to the Office of the Attorney General for collection. The Office of the Attorney General shall pursue collection of either the Final Restitution, Default or Discounted Penalty amount, as appropriate and as offset by any payments made by the Respondents and documented in accordance with Paragraph 15 or 16 above.

17. Any violation of this Order could subject Respondents to additional regulatory or enforcement actions. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas, or restricts the Department from using the facts of this matter, or other past matters that may come to light in the future, to establish a pattern or practice of repeated violations of law in future proceedings.

ORDER

WHEREFORE, based on the foregoing, the Commissioner ORDERS that this matter is resolved in accordance with the provisions listed above.

It is further ORDERED that the Respondents are jointly and severally liable for the payment in full of Final Restitution of \$524,780.38, in accordance with the terms in paragraph 14 of this Consent Order, on or before February 15, 2019.

It is further ORDERED that the Respondents are jointly and severally liable for the payment in full of the applicable penalty, including the Default Penalty of \$520,000.00, in accordance with, and as modified by, the terms in paragraph 16.

It is further ORDERED that Order No. 2018-019 is final and unappealable, provided however that to the extent any conflict may exist between the provisions of this Order and Order No. 2018-019, this Order shall supersede the provisions of Order No. 2018-019.

EFFECTIVE DATE

This Order against Respondents is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 6th day of November, 2018.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ Billy F. Peel
Billy F. Peel, Individually_

November 6, 2018
Date

/s/ Billy F. Peel
Billy F. Peel, as President and duly authorized
agent of Austin Peel and Son Funeral Home, Inc.

November 6, 2018
Date

State of Texas §
 §
County of Travis §

NOTARIZED VERIFICATION

Before me, on this 6th day of November, 2018, personally appeared Billy F. Peel, whose identity is either known to me or was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed above, and executed this Consent Order in both his individual capacity, and in his capacity as President and duly authorized agent for Austin Peel and Son Funeral Home, Inc.

(S E A L)

/s/ Owen T. Kinney
(State of Texas Notary Signature)
My commission expires: December 13, 2020

APPROVED AS TO FORM:

/s/ Chris W. Bell
Chris W. Bell
Assistant General Counsel
Texas Department of Banking

November 6, 2018
Date

/s/ Owen T. Kinney
Owen T. Kinney
Attorney for Respondents

November 6, 2018
Date