

ORDER NO. 2019-009

IN THE MATTER OF:	§	BEFORE:
	§	
CLAYTON KAY-VAUGHAN	§	
FUNERAL HOMES	§	THE BANKING
	§	COMMISSIONER OF TEXAS
	§	
GRANDVIEW, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of Clayton Kay-Vaughan Funeral Homes (“CKV” or “Respondent”) located in Grandview, Texas was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

1. Respondent operates multiple funeral homes located in the state of Texas.
2. The Texas Department of Banking (“Department”) has jurisdiction over Respondent and the subject matter of this proceeding pursuant to Texas Finance Code (“Finance Code”) Chapter 154. The Commissioner has the authority to issue this Consent Order (“Order”) pursuant to Finance Code § 154.406.
3. Respondent has been properly notified of its right to an administrative hearing under Finance Code Chapter 154.
4. The undersigned representative of Respondent has full authority to enter into and bind Respondent to the terms and conditions of this Order.
5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 154.161 and 154.406.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Chapter 154 and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the

Commissioner, or the Finance Commission of Texas under Chapter 154 or other applicable law.

7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent 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.
8. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondent that Chapter 154 or a rule adopted or order issued under Chapter 154 has been violated.
9. The Commissioner has considered this matter and finds as follows:
 - a. Respondent performs funeral services for Texas residents as a funeral provider under insurance-funded prepaid funeral benefits contracts.
 - b. In January 2018, the Department conducted an examination of an insurance-funded prepaid funeral benefits permit holder. During that examination, Department staff reviewed information that indicated Respondent had potentially not provided refunds due to certain customers.

- c. Under Finance Code § 154.161, after the death of a prepaid funeral contract beneficiary, the funeral provider under the contract must: deliver the contracted funeral merchandise and services and cash advance items required under the contract; prepare a written pre-need to at-need reconciliation to verify that the specified goods and services are delivered or performed for the agreed price; and promptly refund any amounts due that may be revealed by the reconciliation.
 - d. Between May and November 2018, the Department requested, and Respondent provided, documentation showing that for at least nineteen insurance-funded prepaid funeral benefits contracts during the past three years, Respondent failed to provide the refunds due to the customers. Consequently, the Commissioner finds that Respondent violated Finance Code § 154.161.
 - e. As required by Finance Code § 154.406(c), the Commissioner has considered the seriousness of the violations, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 154.
 - f. Based on these findings and based on the representations made by Respondent, the Commissioner finds that a penalty of \$14,250 is appropriate, payable in twelve installments.
- 10. Respondent has agreed to comply with the terms that are set out in the Order below.
 - 11. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Respondent that come to the attention of the Department. However, nothing herein shall be construed to limit Respondent's right to contest any future finding or determination of non-compliance.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that within 30 days of the Effective Date of this Order, Respondent will cause to be delivered to the Department a wire transfer made payable to the Texas Department of Banking in the amount of \$2,150 as the first installment of the administrative penalty. It is further ORDERED, ADJUDGED AND DECREED that on or before the 1st day of each subsequent month beginning on May 1, 2019, Respondent will cause to be delivered to the Department wire transfer made payable to the Texas Department of Banking in the amount of \$1,100 with the last payment being due no later than March 1, 2020.

EFFECTIVE DATES

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

Signed on this 22nd day of March, 2019.

/s/ Charles G. Cooper

Charles G. Cooper
Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

Clayton Kay-Vaughan Funeral Homes

/s/ Anna J. Lax
Signature

Anna J. Lax, managing member
[Printed Name, Title]

Date: March 2, 2019

APPROVED AS TO FORM:

/s/ John R. Lively, Jr.
John R. Lively, Jr.
Lively & Associates
Counsel for Clayton Kay-Vaughan Funeral Homes

Date: March 4, 2019

/s/ Catherine Reyer
Catherine Reyer
General Counsel
Texas Department of Banking

Date: March 21, 2019