

ORDER NO. 2022-018

IN THE MATTER OF:

§ BEFORE THE BANKING

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DAVID BENJAMIN VAUGHAN

COMMISSIONER OF TEXAS

BOERNE, TEXAS

**AUSTIN, TRAVIS COUNTY,
TEXAS**

CONSENT ORDER

On this day, the matter of David Benjamin Vaughan (“Respondent”) of Boerne, Texas, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (“Commissioner”), for consideration and action.

- 1) The Commissioner and the Texas Department of Banking (the “Department”) have jurisdiction over Respondent and the subject matter of this proceeding pursuant to chapter 154 of the Texas Finance Code and authority to issue this Consent Order thereunder.
- 2) Respondent has been properly notified of his right to an administrative hearing under chapter 154 of the Texas Finance Code.
- 3) Respondent understands and agrees the terms and conditions of this Consent Order and has retained and been advised by legal counsel regarding these matters.
- 4) Any violation of this Consent Order could subject Respondent to additional regulatory or enforcement actions. Nothing in this Consent Order diminishes the regulatory or enforcement powers of the Commissioner, the Department, or the Texas Finance Commission.
- 5) For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a) service upon Respondent of this Consent Order;
 - b) the right to present defenses to the allegations in this proceeding;

- c) notice and hearing prior to imposition of this Consent 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; and
 - g) any review of this Consent Order by the Texas Finance Commission, judicial review of this Consent Order as provided by chapter 2001 of Texas Government Code, and any other challenge to the validity of this Consent Order.
- 6) Respondent and the Commissioner agree to this Consent Order solely for the purpose of this proceeding, and without Respondent admitting or denying any violations of law or regulations. This Consent Order does not constitute an admission by Respondent that chapter 154 of the Texas Finance Code or a rule adopted or order issued thereunder or any applicable law has been violated.
- 7) This Consent Order does not restrict the Commissioner, the Department, or the Texas Finance Commission 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 to the extent those violations were not actually known by the Department as of the effective date of this Consent Order.
- 8) Nothing herein limits Respondent's right to contest any future finding or determination of non-compliance with this Consent Order.

I. Findings

Background

- 9) Between 1992 and 2017, Respondent owned and operated Vaughan's Hill Country Funeral Home, Inc. (the "Funeral Home"), a funeral home business in Boerne, Texas.
- 10) Respondent became sole owner of the Funeral Home in 2011 when his wife passed away and

bequeathed her interest in the Funeral Home to him. Respondent caused the Funeral Home to cease operating and sell substantially all of its assets in 2017.

11) In connection with the operation of this business, Respondent entered or caused the Funeral Home to enter various prepaid funeral agreements, which include contracts for prepaid funeral benefits as defined by § 154.002(9) of the Texas Finance Code (“PFCs”).

12) Respondent has asserted that he lacks financial resources to pay amounts greater than the restitution and administrative penalty payments required below and has supported that assertion with financial disclosures made on July 14, 2022 under the penalty of perjury.

13) Respondent has asserted that he has provided compensation to a number of PFC purchasers on account of the matters discussed herein.

Obligations as Agent of Seller of PFCs

14) For certain PFCs, Respondent was agent for various applicable sellers of insurance-funded PFC (the “Insurance-Funded PFCs”), all of which hold permits from the Department to conduct such sales. For Insurance-Funded PFCs, Respondent’s legal obligations and responsibilities as “agent of the seller” include, without limitation, being responsible for the deposit of money collected under the Insurance-Funded PFC and refraining from misapplying those payments by not remitting such funds to the seller of the Insurance-Funded PFC. Tex. Fin. Code § 154.203; Tex. Penal Code § 32.45.

15) Respondent failed to fulfill certain of these obligations and responsibilities with regard to various PFCs (“Applicable PFCs”).

Obligations as Seller of PFCs

16) For the other PFCs, Respondent or the Funeral Home itself was the “seller” of such PFCs (the “In-House PFCs”). For In-House PFCs, Respondent’s legal obligations and responsibilities, without limitation, include:

- a) holding a permit issued under subchapter C of subchapter 154 of the Texas Finance Code, Tex. Fin. Code § 154.101;
- b) renewing that permit until all the In-House PFCs are fully discharged, *id.* § 154.107;
- c) depositing certain of the funds collected on account of the In-House PFCs into a trust account with a financial institution, *id.* § 154.253; and
- d) maintaining accounting records regarding such payments and deposits, *id.* § 154.264.

17) Neither Respondent nor the Funeral Home ever held such a permit and Respondent failed to fulfill other obligations and responsibilities with regard to various PFCs (also “Applicable PFCs”). Respondent is liable for certain of these unfulfilled obligations and responsibilities.

II. Order

18) In accordance with Texas Finance Code § 154.412(a), it is hereby ORDERED that the Respondent provide the Department with copies of all contracts and other records relating to Applicable PFCs in Respondent’s possession, wherever they may be located, held or found; or, if all such documents have been provided to the Department, confirm that to the Department in writing under penalty of perjury.

19) In accordance with Texas Finance Code § 154.412(a), it is hereby ORDERED that the Respondent provide the Department with all accounts in which prepaid funeral funds, including earnings, may be held, or, if such accounts do not exist, confirm that to the Department in writing under penalty of perjury.

20) In accordance with Texas Finance Code § 154.408(a), it is hereby ordered that Respondent:

- a) Retain and Provide Copies of Applicable PFCs and Relevant Documents.¹ Respondent must, pursuant to 7 Tex. Admin. Code §§ 25.10 & 25.11, retain and preserve all contracts

¹ These subject headings are for convenience of the reader. They do not have legal effect.

and other records relating to Applicable PFCs in Respondent's possession that relate to the sale or cancellation of such PFCs, wherever they may be located, held or found, promptly provide copies of such documents to the Department and retain and preserve all such documents until Respondent receives further written instructions from the Department regarding such documents.

- b) Further Restitution. Respondent must make further full restitution to purchasers of all payments made by purchasers for the purchase of Applicable PFCs under Tex. Fin. Code § 154.411, except that restitution need not be made where (1) the contracted funeral merchandise and services and cash advance items required under the PFC have been provided without additional charge; (2) a valid replacement Insurance-Funded PFC for the contracted funeral merchandise and services and cash advance items required under the PFC was properly issued without additional charge; or (3) full restitution has been provided. Respondent shall issue such further or additional refunds within thirty (30) days of the earlier of (1) the time when Respondent knew or reasonably should have known about such obligations, or (2) Respondent receiving written instructions from the Department requiring such payments.
- c) Remittance of Unclaimed Funds. On 120 days of execution of this Consent Order, Respondent shall treat all unpaid funds due to PFC purchasers as abandoned under subchapter G of chapter 154 of the Texas Finance Code, including but not limited to delivering such funds to the Texas Comptroller of Public Accounts in accordance therewith.
- d) Proof of Payments & Other Compliance with Consent Order. Respondent shall provide Department with written documents evidencing all payments made under this Consent Order within 30 days of making such payments. Respondent shall retain and preserve all

communications, responses, proof of payments, and other documents relating to compliance with this Consent Order until Respondent receives further written instructions from the Department regarding such documents. Respondent shall make such documents available to the Department upon request.

21) Respondent shall pay an administrative penalty to the Department totaling \$10,000 under Tex. Fin. Code § 154.406; provided that such amount shall be \$50,000 if (a) \$3,000 is not paid to Department via cashier's check or wire transfer within fourteen days of this Consent Order becoming effective as provided below or the remaining \$7,000 is not paid to the Department in monthly payments of at least \$200 per month no later than the first day of each month commencing on July 1, 2022, (b) Respondent does not at all times fully comply with all requirements under this Consent Order, and (c) Respondent's financial disclosures to the Department referenced above are materially inaccurate as of the time they were made. If Respondent fails to timely make this payment or violates any other requirements of this Consent Order, or if Respondent's financial disclosures to the Department as referenced above were materially inaccurate as of the time they were made, the \$50,000 penalty amount remaining becomes immediately due. This provision does not limit, impair, or affect any other rights or remedies available to the Department in the event of non-compliance with this Consent Order by Respondent.

EFFECTIVE DATES

This Consent Order against Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date. The provisions of this Consent Order will remain effective and in force except in the event that, and until such time as, appropriate portions of this Order shall have been modified, terminated, suspended, or set aside in accordance with chapter 154 of the Texas Finance Code or other law. Upon becoming effective, the *Order to Cease and*

Desist Activity and to Seize Prepaid Funeral Accounts and Records, No. 2022-003, entered February 8, 2022, is released and dissolved without prejudice, and the Department shall move to dismiss the related enforcement proceeding, Docket No. BF-2203-19-164, without prejudice.

It is so ORDERED.

Signed on this 19th day of July, 2022.

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

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

/s/ David Benjamin Vaughan
David Benjamin Vaughan

July 13, 2022
Date

APPROVED AS TO FORM:

/s/ Jesse T. Moore
Jesse T. Moore
Assistant General Counsel
Texas Department of Banking

July 18, 2022
Date