

Order No. 2023-017

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
	§	
EDWARD RUSSELL WEAVER	§	
	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
	§	
KAREN E. RANDLE	§	
	§	
	§	
WHARTON, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

FINAL ORDER

On February 24, 2023, Administrative Law Judge (ALJ) Daniel Wiseman with the State Office of Administrative Hearings (SOAH) convened a hearing on the merits of this case under SOAH Docket No. 451-23-10251. The Texas Department of Banking (Department) was represented by Assistant General Counsel Stephen Speck. Respondents represented themselves *pro se*. On April 25, 2023, ALJ Wiseman issued a Proposal for Decision (PFD), including Findings of Fact and Conclusions of Law. On May 9, 2023, the Department filed exceptions to the PFD recommending changes for clarity. On May 23, 2023, ALJ Wiseman issued a letter (Exceptions Letter) agreeing to the changes suggested by the Department. Copies of the PFD and the Exceptions Letter are attached to this order and incorporated by reference.

The Banking Commissioner of Texas, after review and consideration of the PFD and the Exceptions Letter, hereby accepts and adopts the PFD and the changes in the Exceptions Letter.

In accordance with the Findings of Fact and Conclusions of Law in the PFD, the Commissioner finds that the restitution received thus far in this matter should be distributed pro rata among the three known victims, M.G., E.G., and D.T.

The Commissioner further finds that an administrative penalty in the amount of \$3,000.00 against Edward Russell Weaver is reasonable and appropriate after considering the facts of this case, the factors set forth in Texas Finance Code Section 154.406, and the recommendations of the Department and the ALJ.

The Commissioner further finds under Texas Finance Code Section 154.411 that an order of restitution from Edward Russell Weaver and Karen E. Randle in the amount of \$6,100.00 is warranted.

IT IS THEREFORE, ORDERED that an administrative penalty in the amount of \$3,000.00 be and is hereby ASSESSED against Edward Russell Weaver, and that Edward Russell Weaver pay an

administrative penalty in the amount of \$3,000.00 to the Texas Department of Banking within thirty (30) days of the date of this Order.

IT IS FURTHER ORDERED that Edward Russell Weaver and Karen E. Randle pay as restitution the amount of \$6,100.00 to the Texas Department of Banking within thirty (30) days of the date of this Order.

This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Respondents that come to the attention of the Department to the extent those violations have not been identified by the Department as of the effective date of this Order.

SIGNED and ENTERED this 25th day of May, 2023.

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Texas Department of Banking's Final Order has been sent on this the 25th day of May 2023, to the following via certified mail return receipt requested to:

Mr. Edward Russell Weaver
523 E. Elm Street
Wharton, Texas 77488
CMRRR# 7021 1970 0000 4441 6835

Ms. Karen. E. Randle
615 CR 211
Wharton, Texas 77488
CMRRR # 7021 1970 0000 4441 6842

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

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF BANKING,
PETITIONER**

V.

**EDWARD RUSSELL WEAVER AND KAREN E. RANDLE,
RESPONDENTS**

PROPOSAL FOR DECISION

The Texas Department of Banking (Department) seeks disciplinary action against Edward Russell Weaver and Karen E. Randle. The Department alleged that Mr. Weaver and Ms. Randle violated Texas Finance Code section 154.101 by selling prepaid funeral benefit contracts (PFBCs) without a permit. The Department seeks an administrative penalty of \$9,000 and restitution in the amount of \$6,100. The Administrative Law Judge (ALJ) finds that Mr. Weaver committed three violations and Ms. Randle two. The ALJ and recommends that an administrative penalty of \$3,000 be assessed against Mr. Weaver; no penalty be assessed against Ms. Randle;

and Mr. Weaver and Ms. Randle be ordered to pay restitution in the amount of \$6,100.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

On February 24, 2023, ALJ Daniel Wiseman with the State Office of Administrative Hearings (SOAH) convened a hearing on the merits in this case via Zoom videoconference. The Department was represented by staff attorney Stephen Speck. Respondents appeared and represented themselves. The record closed on February 24, 2023, with the filing of admitted exhibits.

II. DISCUSSION

A. APPLICABLE LAW

The sale of PFBCs is governed by Chapter 154 of the Texas Finance Code . Under that chapter, a person must hold a permit to "sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract."¹ Prepaid funeral benefits are "prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container."²

¹ Tex. Fin. Code § 154.101.

² Tex. Fin. Code § 154.002.

The Department administers chapter 154 under the oversight of the Texas Finance Commission, which is led by the Banking Commissioner.³ The Banking Commissioner has the authority to impose an administrative penalty of up to \$1,000 per violation per day on a person who violates chapter 154.⁴

In determining the amount of penalty, the Banking Commissioner must consider the seriousness of the violation, the person's history of violations, the person's good faith in attempting to comply with chapter 154, and whether there is a pattern of willful disregard for the law.⁵ The Banking Commissioner also has the authority to order a person to pay restitution if the Commissioner finds that the person has misappropriated money entrusted to the person that belongs to the beneficiary under a PFBC.⁶

In this proceeding, the Department has the burden of proving its allegations by a preponderance of the evidence.⁷

³ Tex. Fin. Code §§ 154.051, 11.002, 12.101.

⁴ Tex. Fin. Code § 154.406.

⁵ Tex. Fin. Code §§ 154.406, .4061.

⁶ Tex. Fin. Code § 154.411.

⁷ 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Examiners*, 172 S.W.3d 761, 777 (Tex. App.-Austin 2005, no pet.).

B. EVIDENCE

At the hearing, the Department offered 13 exhibits,⁸ which were admitted. The Department presented the testimony of Jay Kim, a review examiner with the Department, and Lori Marcus, a compliance officer with the Texana Center. Ms. Randle and Mr. Weaver testified on their own behalf and did not offer any documentary evidence.

I. Background

Aaron Weaver, the father of Mr. Weaver and Ms. Randle, owned the Pierce Boone Funeral Home in Wharton, Texas, where Respondent Mr. Weaver worked as the funeral director from 1988 until his retirement in late 2020. When Aaron Weaver died in 2012, Mr. Weaver was appointed administrator of his estate. Though the current ownership of the funeral home is unclear, Ms. Randle filed a certificate of ownership with the county clerk, and the Texas Funeral Services Commission identifies Ms. Randle as the owner. Neither the funeral home, which is no longer in operation, Mr. Weaver, nor Ms. Randle ever possessed a license to sell PFBCs.

In the fall of 2020, Mr. Weaver filed a complaint with the Department, stating that Ms. Randle was improperly receiving funds from «pre-need funeral" sales for three clients, M.G. and E.G. (a married couple) and D.T.⁹ Mr. Weaver wrote that Ms. Randle cc cashed the checks and instead of sending the funds to the banking commission she put the money in her pocket." He wrote that «this is a pure case of

⁸ Dept. Exs. A-M.

⁹ Dept. Ex. C. In this Proposal for Decision, initials are used to protect the clients' privacy.

fraud or embezzlement and a breach of fiduciary trust," adding that "[a]fter not being paid in over a year, I will no longer be Funeral Director in charge after September 2020». ¹⁰

After receiving the complaint, the Department conducted an investigation and obtained contracts and receipts for the three "pre-need» funeral sales related to E.G., M.G., and D.T., all signed by Mr. Weaver.¹¹ The goods and services to be provided by the funeral home under the contracts included « Basic Services of Funeral Director & Staff," embalming, a casket, and other such items.¹² The E.G. contract totaled \$9,450, the M.G. contract totaled \$9,050, and the D.T. contract, totaled \$6,100. The receipts show that the M.G. and E.G. contracts, which are undated, were paid in full on May 5, 2020, and that the D.T. contract was paid in installments until paid in full on June 28, 2017. The Department determined that these contracts constituted PFBCs, and that E.G., M.G., and D.T. had not received any of the contractual services.

On November 13, 2020, the Department sent Ms. Randle a demand for all records relating to the sale of the E.G., M.G. and D.T. contracts, as well as any documents related to PFBCs.¹³ Ms. Randle responded by email, attaching copies of two certificates of deposit issued to the funeral home and payable on death to Mr. Weaver. The first certificate, in the amount of \$9,050, contains the handwritten

¹⁰ Dept. Ex. C.

¹¹ Dept. Exs. D, E, and F, respectively.

¹² Dept. Exs. D, E, and F.

¹³ Dept. Ex. G.

note "M.G. (pre-need).,, The second certificate, in the amount of \$9,450, contains a handwritten note "E.G. (pre-need)." ¹⁴

On January 25, 2021, the Department sent Mr. Weaver and Ms. Randle a request for payment of restitution in the amount of \$24,600.¹⁵ The letter also gave notice that the Department may seek administrative penalties. On February 11, 2021, the Department received a letter from Ms. Randle: "I sincerely apologize for my lack of knowledge. Had I known - this never would have happened. Unfortunately, it doesn't change the outcome." Enclosed with the letter were two cashiers checks for \$9,450 and \$9,050, made payable to E.G. and M.G., respectively. The remaining \$6,100 related to D.T.'s PFBC has not been received by the Department. According to Ms. Randle, the funeral home is not currently operating, and there are no immediate plans to reopen it.

2. Testimony of Jay Kim

Mr. Kim, who has 12 years of experience at the Department, serves as the review examiner for non-depository supervision. Mr. Kim described the Department's investigation in this case and the factual background described above. Mr. Kim further testified about how the Department used the statutory factors in chapter 451 to arrive at the amount of penalties and restitution the Department seeks.. In this case, Mr. Kim testified, there was actual consumer harm because PFBCs were sold without a permit, the services have not been delivered and cannot

¹⁴ Dept. Ex. H.

¹⁵ Dept. Ex. J.

be delivered with the funeral home closed. With respect to history of violations, the Department considers how long the violations have occurred, or whether there is a pattern of misconduct. Here, the Department found that the violations have been going since at least February 2013, and Mr. Weaver and Ms. Randle have still failed to pay the remaining \$6,100 owed to the consumers. Mr. Kim testified that "good faith" involves both intent and any corrective actions that a person may have undertaken. Mr. Kim testified that Mr. Weaver and Ms. Randle failed to implement proper controls or otherwise take corrective actions beyond providing partial restitution, and have not fully responded to the Department's request for information concerning any other PFBCs they may have sold.

After considering all the statutory factors, Mr. Kim testified that the Department seeks \$3,000 in administrative penalties for each alleged violation. According to Mr. Kim, the Department could have sought \$1,000 for each day violation was ongoing and the funds not yet returned, resulting in penalties as high as \$3 million. Here, Mr. Kim testified that \$9,000 is reasonable and not too large to prevent Mr. Weaver and Ms. Randle from being able to pay restitution. The \$6,100 that the Department requests for restitution reflects, according to Mr. Kim, the difference between the total money paid under the three PFBCs (\$24,600) and the amount of restitution that Ms. Randle has already given the Department (\$18,500).

Mr. Kim testified on rebuttal that to sell PFBCs from a licensed third-party, the funeral home would have had to use a specific form approved by the Department. There are certain disclosures required pursuant to Texas Finance Code section 154.151 and the Department's rules, Mr. Kim testified, that make clear to the

consumer the obligations under the contract. None of the contracts at issue here meet those requirements, he testified.

3. Testimony of Lori Marcus

Ms. Marcus has been the compliance officer of the Texana Center for 21 years. According to Ms. Marcus, the Texana Center is a community center that provides services for individuals with intellectual and developmental disabilities or mental health issues. It has group homes as well as offering outpatient services. Ms. Marcus testified that its clients often lack family resources, so the Texana Center will help in providing what they want for their final resting place. She testified that Texana Center purchased a PFBC for D.T., one of its clients. According to Ms. Marcus, D.T. is still living and so has not received any of the services from the funeral home.

4. Testimony of Karen Randle

Ms. Randle testified that her brother, Mr. Weaver, contacted the Department as a result of a "tantrum." According to Ms. Randle, "you know how siblings get into it, but this is unreal." Ms. Randle testified that with respect to sales of funeral services, she left everything up to Mr. Weaver, who had been named administrator of their father's estate and was effectively running the funeral home. She testified that he is the oldest of her siblings and she always looked up to him, but when he got older he got different ideas and started getting "fidgety" when things did not go his way. She described financial disagreements with Mr. Weaver and increasing tension over their roles at the funeral home.

When she was first contacted by the Department, Ms. Randle testified, she made clear that she had not been involved in any of the three contracts at issue, saying that «pre-need" contracts were Mr. Weaver's department. Ms. Randle testified that the Department should not be seeking relief from her, and that placing blame on her instead of Mr. Weaver is« holding the sheep and letting the wolf go."

On cross-examination, Ms. Randle acknowledged that she opened the funeral home's bank account, and is the only person authorized to write checks. She does not dispute that she deposited the checks related to the three contracts at issue here. She testified that she does not consider herself the sole owner of the funeral home but that ownership is instead divided among herself and five other family members. She does not dispute that Mr. Weaver sold PFBCs at issue here. She testified that she sent in the checks to the Department for E.G. and M.G.'s PFBCs because there were certificates of deposit for those accounts, so that funds were available. She testified that she did not have the money to pay the \$6,100 related to the D.T. contract because those funds came into the funeral home in small installments, and she did not know to deposit the checks into a separate account.

5. Testimony of Edward Weaver

Mr. Weaver was the funeral director of Pierce Boone Funeral Home for 35 years. He testified that he did not sell PFBCs or any «pre-need" contracts. He testified that the contracts at issue were only for «goods and services" and were sold through a licensed third-party insurance funded permit holder. According to Mr. Weaver, Ms. Randle is responsible for any misconduct, as she was the one who

handled the money related to the PFBCs, and she should have deposited them with an insurance company.

C. ANALYSIS

Under Texas Finance Code section 154.101, a person must hold a permit to "sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract." The preponderant evidence shows that Mr. Weaver sold PFBCs on three occasions and that Ms. Randle knowingly accepted money for two of those PFBCs on behalf of Pierce Boone Funeral Home.

Though Mr. Weaver contends that the contracts are merely for "goods and services," those goods and services contracted for fall within the definition of prepaid funeral benefits: "prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container." Mr. Weaver presented no evidence to show that these contracts were sold through a licensed third party, and, as Mr. Kirn testified, these contracts lack the specified consumer disclosures required for such a contract.¹⁶ Mr. Weaver's signature is on each contract and every receipt. Accordingly, the ALJ finds that Mr. Weaver violated Texas Finance Code section 154.101 on three occasions by selling prepaid funeral benefits to E.G., M.G., and D.T.

Ms. Randle's involvement in these sales is less clear. The evidence shows that her role in the funeral home was administrative and involved accepting and

¹⁶ Tex. Fin. Code § 154.151; 7 Tex. Admin. Code § 25.3 (setting out required disclosures, including a statement of consequences of default).

disbursing funds. She credibly testified that she had no knowledge that these three sales were improper, and that she had no actual knowledge of the PFBC with D.T., since those funds were received in installments and were not readily attributable to the contract itself. Nevertheless, Ms. Randle acknowledged that she did deposit the checks for E.G. and M.G., specifying on the certificates of deposit that they related to ((pre-need" contracts. As such, the ALJ finds that Ms. Randle violated section 154.101's prohibition on accepting money for prepaid funeral benefits on two occasions by depositing the two checks for E.G. and M.G.'s PFBCs.

The Department argues that an administrative penalty of \$9,000 be imposed, jointly and severally, on Mr. Weaver and Ms. Randle. This amount represents \$3,000 for each violation, which the Department contends were ongoing from the day the PFBCs were sold and have not been refunded. As an initial matter, the ALJ finds that the administrative penalty should not be imposed on the respondents equally. The Department has proven three violations by Mr. Weaver, and only two by Ms. Randle. And the evidence shows that it was Mr. Weaver, a licensed funeral director, who knowingly entered into the contracts and signed the receipts. Ms. Randle's role, on the other hand, was passive, and the two violations she committed by depositing E.G. and M.G.'s contracts into the funeral home's account were committed out of ignorance, relying on Mr. Weaver to ensure that the sales were proper. Accordingly, the respondents must be considered separately in determining the administrative penalty.

With respect to Mr. Weaver, the seriousness of his three violations is grave. The three clients, E.G., M.G., and D.T., invested substantial sums to ensure their

final wishes regarding their funerals would be honored. Instead, the funeral home is no longer in operation and cannot perform its obligations. As Ms. Marcus testified, the Texana Center purchased prepaid funeral services for D.T. because she is part of a vulnerable population, and it is unclear if there would be resources available to honor her final wishes in the future. Betraying that trust, and that of E.G. and M.G., is a serious matter. That these improper sales of PFBCs occurred three times over the course of several years shows a history of violations and willful disregard for the requirements of chapter 154. Finally, the evidence shows a lack of good faith in Mr. Weaver's attempts to comply with chapter 154. Far from an effort to correct his own wrongs, his complaint letter to the Department, which initiated the investigation, was intended to incriminate his sister. He has admitted no misconduct and made no attempt to make his clients whole, despite the fact that he signed the contracts that appear now to be worthless. However, the ALJ disagrees that these three violations are ongoing. The violations-the sales of PFBCs-were discrete events. Accordingly, the maximum penalty that can be assessed for each violation is \$1,000. Applying the statutory factors, imposing the maximum penalty for each violation is appropriate, and the ALJ finds that Mr. Weaver should be assessed an administrative penalty of \$3,000.

In contrast, the ALJ finds that no administrative penalties should be imposed on Ms. Randle. The two violations which the Department proved both relate to passively accepting money for PFBCs rather than actively selling them, and she credibly testified that she was unaware that doing so was improper. The ALJ believes the statement in the letter she provided to the Department transmitting the checks refunding E.G. and M.G.'s money is true: "Had I known, this never would have

happened." While her two violations, accepting E.G. and M.G.'s money, are serious, they occurred only after the clients and Mr. Weaver had entered into the PFBCs, and were committed unwittingly. She reasonably relied on her funeral director brother to comply with the law in such matters. Nor does the evidence demonstrate a history of Ms. Randle's violations: the only two instances occurring when she deposited the two checks at the same time. Her violations were unintentional, not willful. Finally, Ms. Randle has made good faith attempts to remedy the violations, returning \$18,500 of the \$24,600 owed. Accordingly, the ALJ finds that no administrative penalty should be assessed against Ms. Randle.

The Department also seeks an order reqmrmg both Mr. Weaver and Ms. Randle to pay the remaining \$6,100 in restitution. The Finance Code allows the Banking Commissioner to order restitution from a person who "misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract."¹⁷ This provision applies to both Mr. Weaver and Ms. Randle with respect to the remaining \$6,100 associated with D.T.'s contract, as both have failed to pay the beneficiary upon the Department's demand. Accordingly, the ALJ finds that Mr. Weaver and Ms. Randle, jointly and severally, should be ordered to provide restitution in the amount of \$6,100.

Finally, the Department requests that it be given guidance with respect to the allocation of the restitution funds, asking that it be ordered to distribute the funds

¹⁷ Tex. Fin. Code§ 154.411.

pro rata among E.G., M.G., and D.T. until the funds are dispersed.¹⁸ The ALJ finds that such a distribution is appropriate.

In support of these recommendations, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Edward Weaver was the funeral director of Pierce Boone Funeral Home from 1988 to 2020.
2. Karen Randle is a partial owner of Pierce Boone Funeral Home since 2012 and was responsible for administering its finances.
3. Neither Mr. Weaver, Ms. Randle, nor Pierce Boone Funeral Home held a permit to sell prepaid funeral benefits contracts (PFBCs).
4. On February 25, 2013, Mr. Weaver sold a PFBC to the Texana Center for D. T. for \$6,100.
5. D.T.'s contract was paid in installments until it was paid in full on June 28, 2017.
6. Mr. Weaver signed the contract and all of the receipts.
7. Ms. Randle deposited the checks into the funeral home account not knowing that they were associated with a PFBC.
8. On or about May 5, 2020, Mr. Weaver sold PFBCs to M.G. for herself and her husband, E.G.
9. M.G.'s contract cost \$9,450, and E.G.'s contract cost \$9,150.

¹⁸ See Tex. Fin. Code § 154.046 (the Department "shall pay money received under a restitution order to the injured party as ordered").

10. M.G. paid both contracts in full by check on May 5, 2020.
11. Mr. Weaver signed the contracts and the receipts.
12. Ms. Randle deposited the \$9,150 in two certificates of deposit: one, with the hand-written notation "[E.G.] (pre-need)" for \$9,450, and the other, with the hand-written notation "[M.G.] (pre-need)".
13. D.T., M.G., and E.G. have not received the funeral benefits under the contracts.
14. Pierce Boone Funeral Home is no longer in operation and cannot honor the PFBCs sold to D.T., M.G., or E.G.
15. Mr. Weaver's violations were serious, as they betrayed the clients' trust regarding their final wishes, and Pierce Boone Funeral Home cannot honor its obligations under the contracts.
16. Mr. Weaver has not demonstrated good faith in attempting to comply with chapter 154 of the Texas Finance Code.
17. Mr. Weaver's violations show a history of non-compliance with Texas Finance Code section 154.101 and establish a pattern of willful disregard of Texas Finance Code chapter 154.
18. On January 25, 2021, the Department of Banking (Department) sent a letter to Mr. Weaver and Ms. Randle demanding payment of \$24,600 for the three PFBCs sold without a license.
19. On February 11, 2021, the Department received a letter from Ms. Randle stating that she had not known that selling PFBCs without a permit was illegal, and that if she had "it never would have happened."
20. Enclosed with the letter were two cashier's checks for \$9,450 and \$9,050, made payable to E.G. and M.G., respectively.
21. Ms. Randle provided restitution in the amount of \$18,500 for E.G. and M.G.'s PFBCs.

22. Ms. Randle exhibited good faith in her attempts to comply with chapter 154 of the Texas Finance Code.
23. Ms. Randle does not have a history of non-compliance with chapter 154 of the Texas Finance Code.
24. The remaining \$6,100 related to D.T.'s PFBC has not been received by the Department.
25. On January 17, 2023, the Department referred this matter to the State Office of Administrative Hearings (SOAH).
26. On February 9, 2023, the Department issued a Notice of Hearing to Mr. Weaver and Ms. Randle. The notice contained a statement of the time and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
27. On February 24, 2023, SOAH Administrative Law Judge (ALJ) Daniel Wiseman convened a hearing on the merits in this case via Zoom videoconference. The Department was represented by staff attorney Stephen Speck. Respondents appeared and represented themselves. The record closed on February 24, 2023, upon the filing of admitted exhibits.

IV. CONCLUSIONS OF LAW

1. The Banking Commissioner has jurisdiction over this matter. Tex. Finance Code § 154.406.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.

4. The Department has the burden of proving the case by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.-Austin 2005, no pet.).
5. Mr. Weaver violated Texas Finance Code section 154.101 on three occasions.
6. The Banking Commissioner has the authority, after notice and the opportunity for a hearing, to impose an administrative penalty of up to \$1,000 per violation per day on a person who violates Finance Code chapter 154. Tex. Fin. Code § 154.406.
7. In determining the amount of a penalty, the Banking Commissioner must consider the seriousness of the violation, the person's history of violations, the person's good faith in attempting to comply with chapter 154, and whether there is a pattern of willful disregard for the law. Tex. Fin. Code §§ 154.406, .4061.
8. Mr. Weaver should be assessed an administrative penalty of \$1,000 for each of his three violations.
9. Ms. Randle violated Texas Finance Code section 154.101 on two occasions by accepting money for E.G. and M.G.'s prepaid funeral benefits.
10. The Department did not meet its burden to show that Ms. Randle violated Texas Finance Code section 154.101 with respect to D.T.'s PFBC.
11. Ms. Randle should not be assessed an administrative penalty.
12. Both Mr. Weaver and Ms. Randle «misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract," as both have failed to pay the beneficiary upon the Department's demand. Tex. Fin. Code§ 154.406.
13. Mr. Weaver and Ms. Randle should be ordered to pay restitution in the amount of \$6,100.

14. The Department should distribute the restitution received for the three PFBCs pro rata among the beneficiaries until all funds are disbursed. Tex. Fin. Code § 154.046.

Signed April 25, 2023

ALJ Signature:

/s/ Daniel Wiseman

Daniel Wiseman

Presiding Administrative Law Judge

State Office of Administrative Hearings

FILED
451-23-10251
5/23/2023 4:18 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kristofer S. Monson
Chief Administrative Law Judge

May 23, 2023

ACCEPTED
451-23-10251
5/23/2023 4:19:30 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Stephen Speck
Catherine Reyer
Karen Randle
Edward Weaver

VIA EFILE TEXAS

**RE: Docket Number 451-23-10251.NDS; Texas Department of Banking
No. 20-289; Banking Commissioner of Texas v. Karen E. Randle
et al.**

Dear Parties:

On April 25, 2023, a Proposal for Decision (PFD) was issued in the above-captioned and styled matter. Staff for the Texas Department of Banking timely filed exceptions to the PFD on May 9, 2023. Respondent did not file a response to Staff's exceptions.

Staff agrees generally with the substance of the PFD but recommends several changes for clarity. The Administrative Law Judge agrees that the following changes should be made to the PFD:

- On page 1 of the PFD, the last sentence should be changed to read: "The ALJ recommends that ..." [strike "and"].
- On page 3 of the PFD, the first sentence should be changed to read: "The Texas Finance Commission oversees the Department. The Department, led by the Banking Commissioner, administers chapter 154."
- On page 6 of the PFD, under paragraph B.2 Testimony of Jay Kim, the third sentence should be changed to read: "Mr. Kim further testified

about how the Department used the statutory factors in chapter 154 to arrive at the amount of penalties and restitution the Department seeks."

- On page 7 of the PFD, the third full sentence should be changed to read: cc Mr. Kim testified that ... "
- On page 7 of the PFD, first full paragraph, the second sentence should be changed to read: "According to Mr. Kim, the Department could have sought \$1,000 for each day the violation was ongoing, ... " [insert ccthe" between« day" and ((violation"]
- On page 14 of the PFD, the first line at the top of the page should be changed to read: cc ... pro rata among E.G., M.G., and D.T. until all funds are disbursed."
- On page 15 of the PFD, Finding of Fact No. 12 should be changed to read: ccMs. Randle deposited the funds from M.G. in two certificates of deposit: one, with the hand-written notation "[E.G.] (pre-need)" for \$9,450, and the other, for \$9,050, with the hand-written notation " [M.G.] (pre-need)".

Because the State Office of Administrative Hearings has concluded its involvement in the matter, the case is being remanded to the Texas Department of Banking.

ALJ Signature(s):

/s/ Daniel Wiseman

Daniel Wiseman,

Presiding Administrative Law Judge

CC: Service List