

ORDER NO. 2024-002

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
BELLWOOD MEMORIAL PARK	§	COMMISSIONER OF TEXAS
	§	
TEMPLE, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

EMERGENCY ORDER TO CEASE AND DESIST

On this day, the matter of Bellwood Memorial Park (“Respondent”) located in Temple, Texas was submitted to the Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

I. Findings of Fact

A. Background

1. Respondent is a corporation operating a perpetual care cemetery (“PCC”) under certificate of authority number 175. The certificate of authority was issued March 1, 1989. Bellwood is located at 8575 Airport Road Temple, Texas 76504.
2. Ray Harper is the President, Board Chair, and sole owner of Respondent.
3. The Texas Department of Banking (“Department”) regulates PCCs under the authority of *Texas Health and Safety Code* (“Health Code”) Chapters 711 and 712.
4. The Texas Finance Commission has issued rules governing PCCs, which are located primarily in 7 *Texas Administrative Code* (“TAC”) Chapter 26.
5. PCCs are required to maintain certain records relating to the financial condition and operations of the PCC. 7 TAC § 26.2.
6. On December 19-20, 2023, an examination pursuant to Health Code § 712.044 was conducted by the Department on the Respondent’s premises. The examination covered a 15-month period between June 30, 2022 and September 30, 2023 (“exam period”). The Department had previously scheduled the examination to begin November 29, 2023. This date was confirmed by

Mr. Harper via email on October 25, 2023. On November 28, 2023 however, Mr. Harper sent a subsequent email to the Department in which he requested to reschedule the examination due to a family emergency.

B. Perpetual Care Trust Fund Deposits

7. PCCs are required to deposit a certain amount of money collected from each paid-in-full sale of a plot or interment right into a perpetual care trust fund (“fund”). Health Code § 712.028. The fund income is to be used to maintain the cemetery. Health Code § 712.025.

8. During the examination, Mr. Harper produced records identifying four paid-in-full plot sales, along with three plot sales containing outstanding balances, during the exam period.

9. Based on a review of depository account statements, the Department determined that during the exam period, only two deposits were made into the fund on December 21, 2022 and January 30, 2023. The latter statement identified two plot sales, one of which matched the four identified by the Respondent. The December statement did not provide identifying information however the amount deposited was insufficient to cover the remaining three plot sales identified by the Respondent.

10. Based on the available records, the Department confirmed that the fund balance is short by at least \$148.50.

11. In addition, Respondent failed to produce records relating to the sale of plots from January 1, 2023 through September 30, 2023, in violation of Health Code § 712.044. As a result, the Department was unable to determine the extent of Respondent’s non-compliance with the Chapter.

C. Illegal Marker Sales and Failure to Order Markers

12. PCCs are required to order and set burial markers purchased from the PCC within certain timeframes as determined by 7 TAC § 26.4.

13. Pursuant to Commissioner's Order 2008-023 ("2008 Order"), Bellwood is prohibited from selling markers. Despite the 2008 Order, during the examination, Respondent produced records concerning the sale of seven markers between April 2021 and January 2023. The Department was also made aware of an additional marker sale not reported by Respondent.

14. Respondent maintains that the funds from two of the marker sales were fully refunded to the purchasers, though it failed to provide records to substantiate the claim. To date Respondent has therefore purportedly failed to order five markers. During the examination, Mr. Harper stated that Respondent does not have the \$15,870 paid by the purchasers with which to order the outstanding markers.

15. Respondent further failed to produce records relating to the use or expenditure of the funds received from the marker sales.

16. Since July 2023, the Department has received several complaints relating to the sale of markers and the failure of Respondent to order and/or set the marker per the requirements of 7 TAC § 26.4.

D. History of Violations and Willful Disregard

17. Respondent has a history of repeat violations and a willful disregard for the requirements of Health Code, Chapter 712, and the rules of the Finance Commission, which have necessitated prior enforcement actions.

18. As noted above, pursuant to the 2008 Order, Respondent is prohibited from selling markers. The order was issued following repeated violations of 7 TAC § 26.4, including receiving funds from numerous consumers and failing to order the purchased markers.

19. In 2011, Respondent and the Department executed Agreed Order No. 2011-050 ("2011 Order"), imposing an administrative penalty on Respondent for failure to comply with 7 TAC §

26.4 (concerning a marker purchased prior to the 2008 Order) and 7 TAC § 26.12, regarding consumer complaints.

20. In 2012, Respondent, Ray Harper, and the Department executed Agreed Order No. 2012-002 (“2012 Order”), imposing an administrative penalty on Respondent and Ray Harper for violations of the 2008 Order, 2011 Order, and the repeated failure to comply with 7 TAC § 26.4.

21. In 2018, the Commissioner issued Order No. 2018-018 (“2018 Order”) imposing an administrative penalty on Respondent following an Administrative Law Judge’s finding that Respondent had failed to comply with Health Code § 712.029 by failing to make timely deposits into the fund over the course of a 35-month period from January 1, 2014 to December 31, 2017.

22. On October 18, 2022, the Department issued the June 30, 2022 Report of Examination to Respondent (“2022 Report”). The 2022 Report cited multiple violations, including failure to timely submit the Annual Statement of Funds per Health Code § 712.041, failure to timely deposit perpetual care funds per Health Code § 712.029(c), and failure to adequately maintain an accurate historical register of all interment rights sold per 7 TAC § 26.2(b)(4).

23. Respondent further failed to provide additional records requested by the Department in letters dated February 24, 2023 and July 17, 2023. The requested records included:

- i. A list of all markers and monuments sold by Bellwood since December 16, 2008, and all related documents to the sale of these markers and monuments;
- ii. The Board of Director’s acknowledgment page to the June 30, 2022, PCC Report of Examination;
- iii. A copy of Respondent’s 2021 tax return (this request was amended in the July 17th letter to include the 2022 tax return as well);

- iv. Documentation sufficient to substantiate that Respondent maintains the necessary liquidity to continue daily operations, to include the December 31, 2022 financials, and copies of the most current operating account bank statements dated not later than December 31, 2022;
- v. Monthly updates regarding timely deposits of perpetual care funds for the months of September and October 2022 (this request was amended in the July 17th letter to extend the monthly updates from September 2022 through May 2023);
- vi. Copies of corrected conveyance documents numbered 2021-002 and 2021-027;
- vii. 2022 year-end Perpetual Care Cemetery Annual Statement of Funds; and
- viii. 2022 year-end Prepaid Funeral Contract Annual Report (this report was eventually provided to the Department on December 27, 2023).

II. Conclusions

1. Pursuant to Health Code § 712.0444, in the exercise of his regulatory power, the Commissioner may issue an emergency order that takes effect immediately if the Commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by Chapter 712.
2. Respondent has violated statutes and rules governing PCCs as set forth above.
3. The violations and the reasons recited above establish that immediate and irreparable harm is threatened to the public, plot owners, marker purchasers, or other persons whose interests are protected by Chapter 712, and there is sufficient cause for the issuance of this emergency cease and desist order with immediate effect.

III. Order

1. In accordance with Health Code § 712.0444, and in the exercise of the regulatory power of the Texas Banking Commissioner, Respondent is ORDERED to immediately cease and desist from the sale of any cemetery spaces or interment rights in Bellwood Memorial Park.
2. It is further ORDERED that the Respondent shall cease and desist from the sale of any memorials as that term is defined in Health Code § 711.001, including markers, monuments, and benches, and that any agent, employee, or representative of Respondent who received funds for a memorial and failed to order said memorial shall repay the funds to the person from whom they were taken, or provide documentation evidencing the ordering of the memorial within 10 days of the effective date of this order.
3. It is further ORDERED that Respondent, its agents, representatives, and employees, are ordered to cease and desist from all cemetery operations except as set forth in this paragraph. Respondent may conduct burials of persons who own plots as of the effective date of this order, and other persons for whom the Commissioner has given written permission. Respondent shall continue to maintain the property and grounds of the PCC. Respondent may set memorials that have been fully paid for as of the date of this Order.
4. It is further ORDERED that if Respondent performs any burials or sets any memorials as allowed under this Order, Respondent shall ensure that all documentation required by the Health Code and Title 7, Chapter 26 of the Texas Administrative Code is properly completed and maintained. Respondent shall send copies of all such recorded documentation to the Texas Department of Banking within 10 days of any such burials or marker setting.
5. It is further ORDERED that any agent, employee, or representative of Respondent with actual possession or the right to possess any perpetual care funds shall deposit all funds due and owing to the perpetual care fund immediately, and in any case no later than 10 days after the

effective date of the Order. If any previously sold contracts become paid-in-full, Respondent shall deposit the applicable amount due to the perpetual care fund within two days of receiving the fully funded amount. If the Department otherwise determines that additional perpetual care funds are due, Respondent shall deposit such funds to the perpetual care fund no later than two days after being informed of the additional amount by the Department. Respondent will provide evidence of any such deposits to the Department within two days of making the deposit.

6. It is further ORDERED that any agent, employee, or representative of Respondent who has possession or the right to possess records or information necessary to determine what sums are due to the perpetual care fund shall provide those records and that information to the Department within two days of receiving actual or constructive notice of this Order.

7. It is further ORDERED that Respondent provide records detailing any outstanding balances owed to Respondent for the purchase of interment rights, memorials, or other services within 10 days of the effective date of this order.

8. It is further ORDERED that while this order is in effect, Respondent must maintain adequate accounting of all revenue collected and make the records available to the Department on demand.

9. It is further ORDERED that while this order is in effect, Respondent must limit the expenditure of any revenue collected to expenses for cemetery purposes only. Respondent must maintain adequate accounting of any expenditure of revenue collected and make the records available to the Department on demand.

IV. Effective Dates

Pursuant to Health Code § 712.0444(b), this Emergency Order to Cease and Desist takes effect immediately upon Respondent's actual or constructive knowledge of its issuance. The order remains in effect unless stayed by the Commissioner.

V. Right to Hearing

Pursuant to Health Code § 712.0444(c), Respondent may request in writing, not later than the 18th day after the date the Order is mailed, a hearing to show that the emergency order should be stayed.

Signed on this 11th day of January, 2024.

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

CERTIFICATE OF SERVICE

This Emergency Order to Cease and Desist is served on BELLWOOD MEMORIAL PARK as follows: By first-class mail and by certified mail, return receipt requested, and email sent on January 11, 2024, to:

Ray Harper, President and Board Chair
Bellwood Memorial Park
8575 Airport Road
Temple, TX 76502
ray.bellwood@gmail.com
CMRR#: 7021 1970 0000 4441 7689

Ray Harper, Registered Agent
Bellwood Memorial Park
8575 Airport Road
Temple, TX 76502
CMRR#: 7021 1970 0000 4441 7696

/s/ Marcus Adams

Marcus Adams
Deputy General Counsel
Texas Department of Banking