

BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

**FILED**

JUN 11 2008

INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, ex rel. )  
KIM HOLLAND, Insurance Commissioner, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
DAWSON-WELCH FUNERAL HOME, )  
THOMAS J. WELCH, JR., )  
 )  
Respondents. )

Case No. 08-0874-UNI

**APPLICATION FOR EMERGENCY CEASE AND DESIST ORDER**

The Oklahoma Insurance Department (“Department” or “OID”) through Assistant General Counsel John Mahoney applies for an Emergency Cease and Desist Order against Dawson-Welch Funeral Home (“Dawson-Welch”) and Thomas J. Welch, Jr. (“Welch”) hereinafter collectively referred to as Respondents. Respondent Dawson-Welch is a funeral home which has accepted and retains money for prepaid funeral services. Respondent Welch is the owner of Dawson-Welch Funeral Home.

**RESPONDENTS AND SERVICE**

1. Respondents list an address of 715 W. Main Street, Texhoma, Oklahoma

**JURISDICTION**

The Insurance Commissioner has jurisdiction over this matter pursuant to the Oklahoma Constitution Article VI §§ 22, 23 and the Oklahoma Insurance Code 36 O. S. §§ 101 et seq., specifically pursuant to the Prepaid Funeral Benefits Act, 36 O.S. §§ 6121, et seq.

**NATURE OF THIS ACTION**

The Department alleges Respondents are engaging in the Prepaid Funeral Benefits

business in Oklahoma without authorization.

### **ALLEGATIONS OF FACT**

In addition to the above the Department alleges as follows:

1. On or about May 22, 2008 the Department received a complaint from Maurine Williams formerly known as Maurine Wilson. Williams alleged she had entered into a contract (Exhibit "A") with Respondent Dawson-Welch Funeral Home on the February 17, 1997 to provide for her funeral services. The contract provided for Williams to pay the sum of \$5,629.37 to Dawson-Welch. The money was to be placed into trust with the First National Bank of Texhoma, Oklahoma with interest accruing to the Buyer.

2. In May 2008 Williams decided to transfer her prepaid contract to the Bunch-Roberts Funeral Home in Guymon, Oklahoma. Bob Roberts, owner of Bunch-Roberts, contacted Welch about transferring Williams trust money to Bunch-Roberts. Welch stated to Roberts that William's money was in a bank in Dumas, Texas but getting the money was a problem due to interest issues. Welch and Roberts agreed to meet again to complete the transfer. Roberts prepared the paperwork but Welch failed to complete the transfer.

3. Roberts later informed the Department he had been contacted by Welch about purchasing the Dawson-Welch Funeral home several months prior to the attempted transfer of Williams trust money. Welch informed Roberts there was approximately \$65,000.00 in trust for prepaid funerals. No specific information regarding the individuals with money in trust was provided.

4. The Oklahoma Insurance Department initiated an investigation into the matter. Records of the Department revealed that Respondents were not authorized by the department to engage in the business of Prepaid Funeral Benefits, nor had Respondents ever applied for a

permit to engage in the business of Prepaid Funeral Benefits. Further, Respondent Welch's father, Thomas J. Welch Sr. deceased, who initially contracted with Ms. Williams for the prepaid funeral was never authorized by the State of Oklahoma to engage in Prepaid Funeral Benefits business.

5. Department investigators contacted Lloyd Brown with the Oklahoma Funeral Board. Brown stated Dawson-Welch Funeral home was located at 715 West Main Street, Texhoma, Oklahoma and was licensed as a Funeral Establishment by the State of Oklahoma, license number 1276. Funeral Board records show Respondent Thomas J. Welch, Jr. as the sole proprietor. Dawson-Welch was last inspected on December 10, 2007 at which time Welch indicated he was the sole proprietor. Brown was aware that Welch took over operation of Dawson-Welch in December of 2002 when his father became physically unable to run the business.

6. On May 30, 2008 Welch contacted OID Chief Investigator Don Smalling by telephone. Welch stated he had owned Dawson-Welch funeral home since his father died in 2007. Welch claimed the money his father accepted from Maurine Williams had been transferred to the First National Bank of Dumas, Texas. Welch stated he would be unable to get the money due to loss of interest and penalties. However, Welch went on to say he was expecting money from tax returns and the federal economic stimulus payment and once he received that money he would "take care of Williams." Welch asserted that he was unaware of any other monies held in prepaid funeral trusts by Dawson-Welch.

7. Welch admitted he was not licensed for prepaid funeral contracts but intended to apply for a permit. He went on to state he had started a new job and would eventually get Williams her money. Welch sent an e-mail to Smalling in an attempt to explain the situation.

8. Welch e-mailed his communication with Smalling the same day. Welch now stated there may be other prepaid contracts with money in trust or others funded by insurance policies. He reiterated his belief that he could reimburse Williams with tax refunds.

9. On June 8, 2008 Welch again contacted Smalling telephonically. Welch now informed Smalling there were more trusts. Welch stated Dawson-Welch possessed nine paid contracts for prepaid funerals totaling approximately \$50,000.00 in trust.

### **ALLEGED VIOLATIONS OF LAW**

1. Respondents are engaging in the business of Prepaid Funeral Benefits as defined in 36 O.S. §§ 6121 et seq without authority or permit. Further, Respondents are unable to provide or return monies entrusted to them.

2. The alleged conduct is an immediate danger to the public or is causing or can be reasonably expected to cause significant, imminent and irreparable public injury.

### **RELIEF REQUESTED**

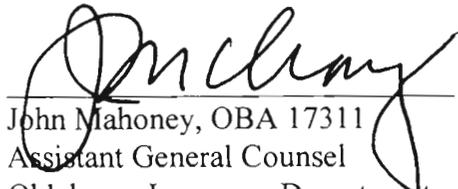
The Insurance Commissioner is requested to immediately without notice or hearing issue an Emergency Cease and Desist Order, under authority of the Oklahoma Administrative Procedures Act and Title 365 of the Oklahoma Administrative Code, ordering Respondents their agents and representatives, both current and successor, whether named or unnamed herein, to cease and desist from all activities related to Prepaid Funeral Benefits in this state, including:

1. The making of or proposing to make any prepaid funeral benefit contracts;
2. The taking or receiving of any application for prepaid funeral services;
3. Maintaining any office where any acts in furtherance of prepaid funeral services are transacted, including but not limited to:

- a. execution of prepaid funeral contracts with citizens of this or any other state,
- b. maintaining files or records of prepaid funeral contracts,
- c. receiving or collection of any payments, commissions, membership fees, assessments, dues or other consideration for any prepaid funeral benefits or any part thereof;
4. The issuance or delivery of prepaid funeral contracts to residents of this state;
5. Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another in:
  - a. solicitation, negotiation, procurement or effectuation of prepaid funeral contracts,
  - b. dissemination of information as to prepaid funeral contracts or costs, or forwarding of applications, or delivery of contracts,
  - c. in any other manner representing or assisting in a prepaid funeral transaction located or to be performed in this state;
6. The doing or proposing to do any prepaid funeral business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes; or
7. Any other transactions of prepaid funeral benefits in this state.

The Commissioner is further requested, notwithstanding the above requested orders, to order Respondent to refund all monies or insurance policies received or held in prepaid funeral trusts, to turn over to the Department all Respondent's records relating to Prepaid Funeral Benefits and to order any further relief which may be deemed appropriate and which is authorized by law, whether or not specifically requested herein, consistent with 36 O.S. §§ 6121 et seq.

Respectfully submitted on this 11<sup>th</sup> day of June, 2008.



John Mahoney, OBA 17311  
Assistant General Counsel  
Oklahoma Insurance Department  
P.O. Box 53408  
Oklahoma City, Oklahoma 73152-3408  
Telephone:(405) 521-2746  
Facsimile:(405) 522-0125

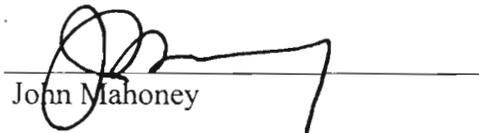
**CERTIFICATE OF MAILING**

I, John Mahoney hereby certify that a true and correct copy of the above and foregoing Application for Emergency Cease and Desist Order was mailed postage prepaid with return receipt requested or personally served on this 11<sup>th</sup> day of June 2008 to:

Thomas J. Welch, Jr  
715 West Main,  
Texhoma OK 73949

Dawson-Welch Funeral Home  
715 West Main  
Texhoma OK 73949

and a copy was delivered to:  
Financial Division,  
Investigations/Anti-Fraud Unit  
Oklahoma Funeral Board



John Mahoney



### Contract For Pre-Arranged and Prepaid Funeral Services

THIS CONTRACT, made and entered into this 17th day of February, 19 97 by and between Dawson-Welch Funeral Home of Texhoma, Oklahoma, hereinafter referred to as "Seller," and Maurine Wilson of Amarillo, Texas hereinafter referred to as "Buyer,"

**WITNESSETH:**

WHEREAS, Buyer desires and hereby requests from Seller a Contract to provide certain funeral merchandise and/or services in advance of death, in consideration of advance payment therefor by the Buyer upon the terms and conditions hereinafter set forth, which funeral merchandise and/or services are to be delivered and performed for and subsequent to the death of Maurine Wilson hereinafter referred to as Beneficiary, as follows:  
 (Description of funeral merchandise or services, including casket, grave vault and all other articles of merchandise incidental to funeral service.)

18 Ga. Monoseal, Primrose	\$2560.00
Concrete Box---	525.00
Professional Service, Use of Equipment	1995.00
Open and Close Grave	200.00
Sales Tax	231.37
Trip to Amarillo	100.00
Four Death Certificates	18.00
	<u>\$5629.37</u>

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter expressed, to be faithfully kept and performed by them, it is hereby understood, covenanted and agreed as follows:

1. Seller will supply to Beneficiary, out of funds deposited by Buyer hereunder, the funeral merchandise and/or services as set forth above, for the sum of \$5629.37, payable as follows:  
Two hundred down and the rest in payments

2. Funds deposited by the Buyer, or not less than ninety per cent (90%) thereof, at discretion of Seller, shall be placed in a trust fund established and maintained for that purpose by Seller with the First National Bank of Texhoma, Oklahoma, hereinafter referred to as Trustee, such deposit of funds with said Trustee to be made by Seller within ten (10) days after receipt thereof from Buyer. Funds deposited by Buyer may be withdrawn only in the event of the death of the Beneficiary, or in the event the Buyer shall hereafter elect to cancel this Contract and withdraw such funds.

3. In the event, upon the death of Beneficiary, the funds deposited by Buyer under this Contract, together with interest accrued thereon, shall be inadequate to provide for the funeral merchandise and/or services above described, at the prices customarily charged by Seller to others, then the fund, including such portion thereof as may have been originally retained by Seller, shall be used by Seller to provide funeral merchandise and/or services of a type as nearly similar to those ordered as may be purchased with said funds at the time of the death of the Beneficiary.

4. Upon the death of Beneficiary, and upon the furnishing by Seller of the funeral merchandise and/or services required to be furnished by him under this Contract, the said funds shall be released by the Trustee forthwith to the Seller, upon receipt of a certified copy of the death certificate or other evidence of death satisfactory to said Trustee, accompanied by a Certificate of Authority for said withdrawal from the Insurance Commissioner of the State of Oklahoma.

5. In the event Buyer shall decide to terminate and cancel this Contract, application shall be made by Buyer to Seller, who shall forward same to said Insurance Commissioner and request the issuance of a Certificate of Authority for the release of said funds by the Trustee to the Buyer, and Seller shall also refund to Buyer, at the same time, any portion of the funds deposited under the Contract which have been retained by Seller.

6. All funds deposited by Buyer hereunder, whether placed in the hands of the Trustee, or retained up to ten per cent (10%) by Seller, shall remain on deposit until the death of the Beneficiary or until withdrawal by Buyer in the manner herein provided. Said funds may be withdrawn only in the full amount and not in part. Any withdrawal of funds must be in accordance with the rules and regulations of the Trustee and the Insurance Commissioner; provided, however, that the Buyer may at any time, upon complying with the rules and regulations of the Trustee and the Insurance Commissioner, withdraw all funds deposited to date pursuant to this Contract, whether such funds be in the hands of the Trustee or be retained up to ten per cent (10%) by the Seller. In the event of any such withdrawal of funds the Seller shall be relieved from any further obligation contained in this Contract.

7. The Trustee shall maintain a separate ledger account for deposits by the Buyer, separate from funds deposited by other Buyers, and shall render an account thereof to Buyer at any time upon request. Likewise, Seller shall maintain a separate account for Buyer for all funds deposited by Buyer and retained by Seller up to ten per cent (10%) thereof, and Seller shall render an account thereof to Buyer at any time upon request.

8. Funds deposited by Buyer and placed with Trustee shall be invested only in federally insured savings accounts or certificates of deposit, either in a state or national bank or savings and loan association. Interest accruing

to the funds deposited by Buyer shall be the property of the Buyer and shall be paid over to the Buyer in the event of withdrawal of funds by Buyer; provided, however, in the event, at the time of the death of Beneficiary the funds deposited by Buyer and held by Trustee, together with any portion thereof retained originally by Seller, would otherwise be insufficient to pay for the funeral merchandise and/or services ordered, at the prices customarily charged by Seller to others, then, to the extent necessary to pay for such funeral merchandise and/or services ordered, or as nearly similar as possible to those ordered, the Seller shall be entitled to the interest on said fund held by the Trustee, as well as the fund itself. Interest shall not be payable on any portion of deposits made by the Buyer and retained by Seller rather than deposited with Trustee

9. In the event there is an excess of money on hand at the death of Beneficiary, including funds in the hands of the Trustee as well as any funds up to ten per cent (10%) originally retained by Seller, over and above the amount necessary to pay for the above described merchandise and/or services, then the excess funds shall be paid out by the Trustee to Beneficiary's estate or to Beneficiary, by the Trustee.

10. Seller shall pay all charges and fees of the Trustee for handling funds deposited by Buyer, and no expense shall be incurred by Buyer in connection with any deposit into the fund or any withdrawal therefrom; provided, however, Buyer shall be charged with his pro rata part of any income tax paid by the trust fund on account of interest earned and credited to Buyer's account.

11. Funds of Buyer deposited with Trustee may be commingled with funds of other Buyers, and all accounting and tax procedures and methods, pertaining to such funds, as well as apportionment of interest and taxes among the various Buyers, shall be at the discretion of Seller and Trustee, treating all Buyers alike as nearly as possible.

12. It is mutually agreed that Trustee is only the repository of said funds and is not liable for the fulfillment of the Contract by Seller, and upon payment over to said Seller of said funds, or repayment thereof to the Buyer, the Trustee's liability shall terminate for all purposes.

13. Seller shall have the right at any time, subject to compliance with rules and regulations of the Insurance Commissioner of the State of Oklahoma, to amend the Trust Agreement under which said trust fund has been established, or to change the Trustee of such fund, and the Trustee, under such Trust Agreement, either as originally established or hereafter amended, shall have all the rights and powers set forth therein, and any of the rights of Seller and Trustee set forth herein, or in such Trust Agreement, may be exercised without consent of Buyer, but subject always to the rules and regulations of said Insurance Commissioner, and in accordance with the laws of the State of Oklahoma pertaining thereto.

14. It is mutually understood and agreed that, while it is the intent and purpose of this Contract to provide for certain pre-arranged and prepaid funeral merchandise and/or services in compliance with the wishes and desires of Buyer, nothing herein contained shall abridge the rights of the survivors of the Beneficiary, and the Contract shall not be legally binding upon said survivors if they do not wish to observe the requests made by Buyer or by said Beneficiary during his or her lifetime, it being understood that the law places upon the surviving spouse, or next of kin, the duty to bury, with which duty comes the right to determine where, in what manner, and by whom the body of the deceased shall be disposed of, and no action taken by the Buyer or Beneficiary during his or her lifetime shall divest the survivors of said Beneficiary of their right of burial.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first above written.

Dawson-Welch Funeral Home

By: Thomas Welch  
SELLER

\_\_\_\_\_  
WITNESS

Maurine Wilson  
BUYER

\_\_\_\_\_  
WITNESS