

ORDER NO. 2014-015d

IN THE MATTER OF:	§	BEFORE:
	§	
	§	THE BANKING
	§	COMMISSIONER OF TEXAS
SMART PAYMENT PLAN, LLC,	§	
NAPLES, FLORIDA	§	AUSTIN, TRAVIS COUNTY, TEXAS

FOURTH CONSENT ORDER

On this day, the matter of SMART Payment Plan, LLC, a Florida limited liability company whose principal address is in Naples, Florida (Respondent or SPP), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. SPP is a Florida limited liability company, with its principal address listed as 999 Vanderbilt Beach Road, Suite 200, Naples, Florida 34108.
2. SPP also maintains an office at 100 Congress Avenue, Suite 2000, Austin, TX 78701.
3. David W. Engelman is one of SPP's two Managing Members and is its Chief Executive Officer.
4. The Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding pursuant to *Texas Finance Code* Chapter 151. The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to *Texas Finance Code* §§ 151.706 and 151.707.
5. Respondent has been properly notified regarding its right to an administrative hearing under *Texas Finance Code* Chapter 151 (Chapter 151). Respondent is represented in this matter by John Fleming, Law Offices of John Fleming, Austin, Texas.
6. The statutory provisions relevant to this matter include *Texas Finance Code* §§ 151.302, 151.702, 151.705 - 151.707. The regulation at issue in this matter is 7 *Texas Administrative Code* (TAC) § 33.27.
7. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by *Texas Finance Code* Chapter 151, Subchapter H, 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 151 or other applicable law.
8. 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.
9. Respondent agrees to this Order solely for the purpose of this proceeding, and without admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondent that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
 10. SPP has been a party to three previous consent orders: Order 2014-015a, issued October 15, 2014; Order 2014-015b, issued October 17, 2014; and Order 2014-15c, issued March 23, 2015. These orders all arose out of SPP's conducting an unlicensed money transmission business in Texas, in violation of the Texas Money Services Act.
 11. Order 2014-015a required SPP to cease and desist any and all money transmission for any new customers in Texas effective October 10, 2014, until SPP obtained a license to do so from the Department. SPP does not have a license.
 12. Based on information provided to the Department by SPP and its former business associate DebtWave Credit Counseling, Inc., SPP violated Order 2014-015a by signing up 2,771 new customers between October 10, 2014 and May 19, 2015.
 13. The Commissioner has considered the matter and finds as follows:
 - a. The Department regulates money transmission under the authority of Chapter 151, Subchapter B.
 - b. As required by Texas Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 151.
 - c. The Commissioner finds that the violations are very serious because after it was required to cease signing up new customers, SPP contracted with 2,771 Texas residents between October 10, 2014 and May 19, 2015 and transmitted at least \$6 million for these persons without the protections in place that are required of a company that holds a money transmission license.
 - d. The Commissioner finds SPP's prior compliance history unsatisfactory in that previously the Commissioner found it necessary to issue three consent orders to SPP, and SPP has violated one of those consent orders.
 - e. The Commissioner finds that SPP has not acted in good faith in attempting to comply with Chapter 151 because it has conducted money transmission business in Texas without a license from 2012 until 2015, despite having been in contact with the Department since 2014 about the necessity of having a license.
 - f. Based on these findings and based on the representations made by SPP as to the volume of transactions and length of time it has been conducting an unlicensed

money transmission business in Texas, the Commissioner finds that a penalty of \$61,600 is appropriate.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that:

14. By 5:00 p.m. no later than 7 days of the Effective Date of this Order, SPP will have delivered to the Department a check in the amount of \$61,600 made payable to the Texas Department of Banking as an administrative penalty.
15. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondent that come to the attention of the Department.

EFFECTIVE DATE

This Order against Respondent is effective on February 13, 2017, and subject to its terms, Respondent may not appeal.

Signed this 13th day of February, 2017.

/s/ Charles G. Cooper

Charles G. Cooper
Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

SMART Payment Plan, LLC.

By: /s/ David Engelman

David Engelman
Managing Member and Chief Executive Officer
Date: February 9, 2017

APPROVED AS TO FORM:

/s/ John Fleming

John Fleming
Counsel for SMART Payment Plan, LLC
Date: February 10, 2017

/s/ Deborah H. Loomis

Deborah H. Loomis
Deputy General Counsel
Texas Department of Banking
Date: February 10, 2017