

ORDER NO. 2020-001

IN THE MATTER OF:	§	BEFORE:
	§	
VIVENTIUM SOFTWARE, INC.	§	THE BANKING
	§	COMMISSIONER OF TEXAS
	§	
BERKELEY HEIGHTS, NEW JERSEY	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, in the matter of Viventium Software, Inc. (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Respondent is a Berkeley Heights, New Jersey based entity that provides employer-clients with payroll processing and other human capital management services.
2. The Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding pursuant to *Texas Finance Code* (Finance Code) Chapter 151 (Chapter 151). The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to Finance Code §§ 151.706 and 151.707.
3. Respondent has been properly notified of its right to an administrative hearing under Chapter 151.
4. The undersigned representative of Respondent has full authority to enter into and bind Respondent to the terms and conditions of this Consent Order.
5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.301, 151.302, 151.702, 151.706, and 151.707.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Chapter 151 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.
7. 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.
8. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent 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.
9. The Commissioner has considered this matter and finds as follows:
- a. Respondent offers payroll processing and human capital management services to employer-clients through its software-as-a-solution product. Respondent has been providing these services to employers in Texas since 2015. Respondent intends to continue providing the services in Texas through a subsidiary, Viventium HCM, LLC (Viventium HCM) and is transitioning its Texas-based customers to Viventium HCM accordingly.
 - b. On December 15, 2020, Viventium HCM obtained a temporary money transmission license from the Department.
 - c. Under Finance Code § 151.301(b)(4), money transmission means “the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value

available at a later time or different location.” The Finance Code defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code § 151.302(b). The Department has concluded that by receiving funds in exchange for a promise to distribute those funds at a later time or different location, Respondent is conducting money transmission.

- d. Finance Code § 151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
 - e. As described above, the Department has concluded that: (i) Respondent is conducting money transmission in Texas; (ii) Respondent is neither licensed by the Department nor determined by the Department to be excluded from licensure under Chapter 151; and (iii) Respondent is not an authorized delegate of a license holder. Consequently, the Commissioner finds that Respondent has violated Finance Code § 151.302.
 - f. As required by 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.
 - g. Based on these findings and based on the representations made by Respondent 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 \$44,701.97 is appropriate.
10. Respondent has agreed to comply with the terms that are set out in the Order below.

11. Nothing in this Order shall prohibit Respondent from obtaining a money transmission license from the Department in the future.
12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other violations by Respondent not now known to the Department that come to the attention of the Department. Nothing herein shall be construed to limit Respondent's right to contest any future finding or determination of non-compliance.

Order

1. It is hereby ORDERED, ADJUDGED and DECREED that within 30 days of the effective date of this Order, Respondent will pay \$44,701.97 to the Department as an administrative penalty under Texas Finance Code § 151.707.
2. Respondent will make a good faith effort to ensure that Viventium HCM fulfills all of the requirements to obtain a license to conduct money transmission in Texas as detailed in Chapter 151 of the Finance Code. In the event that Viventium HCM elects to withdraw its license application or Viventium HCM's license application is suspended pursuant to Finance Code § 151.204, determined abandoned pursuant to 7 Texas Administrative Code § 33.13(g)(1), or denied pursuant to Finance Code § 151.205, Respondent will do the following:
 - a. Within 15 days of the Department's notification to Viventium HCM of said withdrawal, suspension, abandonment or denial, ensure Viventium HCM notifies its existing Texas customers that it will cease providing money transmission to them. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
 - b. Within 60 days of the Department's notification to Viventium HCM of said withdrawal, suspension, abandonment or denial, ensure Viventium HCM ceases and desists from

engaging in the unauthorized business of money transmission in Texas and returns Texas customer funds held by Respondent to its Texas customers; and

- c. Within seven days of achieving full compliance with this paragraph, Respondent must confirm to the Department in writing that Viventium HCM has ceased all unlicensed activities in Texas.

Effective Date

This Order against Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 19th day of January, 2021.

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

AGREED AS TO FORM AND SUBSTANCE

Viventium Software, Inc.

By: /s/ Elizabeth Carisons

Date: December 29, 2020

APPROVED AS TO FORM:

/s/ Sumit K. Arora

Sumit K. Arora
Kilpatrick Townsend & Stockton LLP
Counsel for Viventium Software, Inc.

Date: January 10, 2021

/s/ Marcus Adams
Marcus Adams
Assistant General Counsel
Texas Department of Banking

Date: January 15, 2021