

ORDER NO. 2016-008

IN THE MATTER OF:	§ BEFORE
	§
DEBTWAVE CREDIT	§ THE BANKING
COUNSELING, INC.	§ COMMISSIONER OF TEXAS
	§
SAN DIEGO, CALIFORNIA	§ AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of DebtWave Credit Counseling, Inc., San Diego, California (DebtWave or Respondent), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. DebtWave is a not-for-profit corporation organized under the laws of the State of California and is located at 9325 Sky Park Court, Suite 260, San Diego, California 92123. DebtWave operates on the Internet through its webpage located at <http://www.debtwave.org/>.
2. Antony Murigu is the President of DebtWave and is duly authorized to enter into this Order on behalf of Respondent.
3. The Texas Department of Banking (Department) has jurisdiction over DebtWave and the subject matter of this proceeding pursuant to *Texas Finance Code* Chapter 151 (Chapter 151. The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to *Texas Finance Code* §§ 151.702, 151.705 - 151.707.
4. Respondent has been properly notified regarding its right to an administrative hearing under *Texas Finance Code* Chapter 151.
5. The statutory provisions at issue in this matter include *Texas Finance Code* §§ 151.301, 151.302, 151.702, and 151.705 - 151.707.

6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by 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.
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 findings of fact, or 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 the matter and finds as follows:
 - a. The Department regulates money transmission under the authority of Chapter 151, Subchapter B.
 - b. DebtWave is a debt management service provider as defined by Chapter 394 of the Texas Finance Code (Chapter 394). As such, DebtWave acts as an intermediary

- between Texas consumers and their creditors to negotiate with and obtain concessions from the creditors on behalf of the consumers. DebtWave also receives and disburses money to creditors on behalf of consumers for debt management services.
- c. DebtWave is registered with the Texas Office of Consumer Credit Commissioner as a Texas debt management service provider, Registration No. 125695.
 - d. The Department has not licensed DebtWave to engage in the business of money transmission in Texas.

DebtWave Enters into Discussions with an Unlicensed Money Services Business

- e. In early 2015 DebtWave entered into discussions with an unlicensed money services business (Unlicensed MSB) regarding DebtWave assuming Unlicensed MSB's accelerated bi-weekly payments program in Texas. Unlicensed MSB reached out to DebtWave to negotiate for DebtWave to assume Unlicensed MSB's accelerated bi-weekly payments program in Texas because Unlicensed MSB had entered into numerous public orders with the Department from October 2014 to March 2015 and had agreed to cease its unlicensed activities in Texas.
- f. An accelerated bi-weekly payments program is a payment processing service that typically involves a company debiting borrowers' bank accounts on a biweekly basis and making payments to lenders in an effort to assist the borrowers in paying off their loans on an accelerated schedule. Pursuant to a written agreement, the company debits a customer's bank account and subsequently pays the customer's creditor, and charges a fee for these services.
- g. Under *Texas Finance Code* § 151.301(b)(4)(A)(iii), third party bill payment services like those described above constitute money transmission.

DebtWave Writes to the Department for an Exemption

- h. On April 14, 2015, DebtWave wrote to the Department to request an exemption from the requirement to obtain a money transmission license under Chapter 151. Even though DebtWave was already in discussions with Unlicensed MSB to assume its accelerated bi-weekly payments program in Texas, DebtWave did not disclose this information in its request for an exemption.
- i. On April 29, 2015, based on the written representations made by DebtWave regarding only its core debt management services business, the Department determined that DebtWave was exempted from money transmission licensing as a debt management service provider pursuant to 7 *Texas Administrative Code* (TAC) § 33.53.

DebtWave Begins Offering Accelerated Payment Services

- j. On June 24, 2015, DebtWave and Unlicensed MSB entered into a one page Memorandum of Understanding (MOU) that set out the framework for the transition of Unlicensed MSB's Texas clients to DebtWave.
- k. On or about July 6, 2015, DebtWave began offering accelerated bi-weekly payment plans to Unlicensed MSB's former Texas clients. DebtWave enrolled customers from July 6, 2015, to February 4, 2016. According to DebtWave, more than 14,500 customers transitioned from Unlicensed MSB to DebtWave in order to continue their automated bill payments.
- l. On July 16, 2015, in order to transition Unlicensed MSB's Texas clients to DebtWave, Unlicensed MSB transferred \$2.5 million in customer funds to DebtWave's bank account to cover forthcoming payments to creditors. Unlicensed MSB did not provide an accounting for the \$2.5 million until September 2015, when DebtWave learned that Unlicensed MSB had miscalculated the customer funds it should have deposited with DebtWave. According to DebtWave, Unlicensed MSB owed DebtWave an additional amount in customer funds.

- m. On July 17, 2015, DebtWave began processing payments for Unlicensed MSB's former Texas clients. Between July 2015 and March 2016, DebtWave transmitted over \$50,000,000 in payments for Texas consumers without the required license.
- n. When DebtWave accepted the former Texas clients of Unlicensed MSB and began servicing their accelerated bi-weekly payment plans, DebtWave relied on Unlicensed MSB for technical support per the terms of the MOU. Although technical support was not defined in the MOU, according to DebtWave it entailed Unlicensed MSB directing when debits were made from customer bank accounts and when payments were made to creditors. Unlicensed MSB also maintained all customer ledgers, possessed all customer contracts, and provided all customer service.
- o. In September 2015, DebtWave engaged information technology consultants to reformat Unlicensed MSB's account information and migrate the customer data to DebtWave systems. Due to continued technical problems, the data migration process was never completed. For the entire time that DebtWave operated its accelerated bi-weekly payments program in Texas, DebtWave relied on Unlicensed MSB to maintain customer accounts, perform debits and payments, and overall execute all technical aspects of DebtWave's bill pay program.

Department Learns of DebtWave's Accelerated Bi-Weekly Payments Program

- p. In December 2015, the Department learned that DebtWave had assumed Unlicensed MSB's accelerated bi-weekly payments program in Texas and had contracted with Unlicensed MSB's former Texas customers to continue making their bill payments. On December 15, 2015, the Department mailed a letter to DebtWave asking for information about its accelerated bi-weekly payments program. The Department was particularly interested in how this new service related to DebtWave's primary debt

management services business and how this new service impacted DebtWave's exclusion from money transmission licensing under 7 TAC § 33.53.

- q. On February 1 and 2, 2016, DebtWave provided written responses to the Department's inquiry. DebtWave took the position that its new accelerated bi-weekly payments program was part of its core debt management services. However, the Department found that the accelerated bi-weekly payments program that it assumed from Unlicensed MSB was not debt management services because DebtWave did not comply with the requirements of Chapter 394. For example, DebtWave did not provide the former Unlicensed MSB customers with individualized counseling or financial analyses before enrolling them in the program as required by *Texas Finance Code* § 394.208. Additionally, a debt management service is defined in Chapter 394 as service in which a provider obtains or seeks to obtain a concession from one or more creditors on behalf of a consumer. The Department found that as to Unlicensed MSB's former clients, DebtWave did not obtain or seek to obtain any concessions from creditors on behalf of those clients.

DebtWave Agrees to Terminate its Accelerated Bi-Weekly Payments Program

- r. As of February 1, 2016, DebtWave ceased offering accelerated bi-weekly payment services to new consumers in Texas.
- s. On February 16, 2016, the Department and DebtWave entered into a settlement whereby DebtWave agreed by March 31, 2016, to cease providing accelerated bi-weekly payment services to its Texas customers that were former customers of Unlicensed MSB (Wind Down Agreement). DebtWave also agreed to return any funds due to its Texas customers that were former customers of Unlicensed MSB by April 30, 2016.

- t. Under *Texas Finance Code* § 151.302, a person may not conduct money transmission for persons located in Texas and receive any form of compensation for it unless the person is licensed under Chapter 151, is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
- u. From July 17, 2015 until March 31, 2016, DebtWave conducted money transmission for persons in Texas through the accelerated bi-weekly payment program it assumed from Unlicensed MSB.
- v. The Department has not licensed DebtWave to conduct money transmission; DebtWave is not an authorized delegate of a license holder; and DebtWave is not excluded from licensure under the Act. DebtWave was granted an exemption under the Act for its core debt management services, however that exemption did not extend to the unlicensed money transmission business that DebtWave assumed from Unlicensed MSB. Had the Department been informed that DebtWave was assuming Unlicensed MSB's unlicensed money transmission business, the Department would not have granted DebtWave an exemption from licensure. Consequently, the Commissioner finds that DebtWave violated Chapter 151.
- w. 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. The Commissioner finds that the violations are serious because:
 - i. DebtWave was required to be a licensed money transmitter in Texas to offer third party bill payment services to non-debt management customers, but operated without said license;

- ii. DebtWave contracted with over 14,500 Texas residents and transmitted at least \$50,000,000 without the protections in place that are required of a company that holds a money transmission license;
- iii. DebtWave has not accounted for all funds collected from Texas consumers. DebtWave has not provided evidence to the Department that adequately accounts for or reconciles the customer funds transferred over from Unlicensed MSB as identified in paragraph 9(1) of this Order, and has been unable to provide a verifiable accounting for the funds involved in the routine debits and credits made on behalf of individual customers. The Department has no confidence in the integrity of DebtWave's financial data related to this activity; and
- iv. DebtWave was not in control of its accelerated bi-weekly payments program. For the entire time that DebtWave made bill payments for Unlicensed MSB's former customers, DebtWave had to rely on Unlicensed MSB for account functions and details.
- x. The Commissioner finds Respondent's prior compliance history unsatisfactory because DebtWave conducted money transmission business for 10 months without holding a Texas money transmitter license as required.
- y. The Commissioner finds that Respondent did not act in good faith in attempting to comply with Chapter 151. Although DebtWave cooperated with the Department's investigation, DebtWave acted in bad faith and demonstrated wilful disregard for the requirements of Chapter 151 by omitting information about its assumption of Unlicensed MSB's accelerated bi-weekly payments program from its letter seeking an exemption from licensure. The Commissioner finds this omission was an attempt to

circumvent licensing requirements and was done with a wilful disregard for the requirements of Chapter 151.

- z. Based on these findings and based on the representations made by DebtWave as to the volume of transactions and length of time it conducted unlicensed money transmission in Texas, the Commissioner finds that a penalty of \$67,000 is appropriate.
10. DebtWave has agreed to comply with the terms that are set out in the Order below.
 11. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by DebtWave that come to the attention of the Department. However, nothing herein shall be construed to limit DebtWave's right to contest any future finding or determination of non-compliance.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that:

1. DebtWave will not conduct any money transmission as defined by Chapter 151 for any customers in Texas. This includes business conducted directly or through the activity of others, such as third-party service providers, and includes but is not limited to advertising and soliciting persons in Texas. However, as to its legitimate debt management services as defined by Chapter 394 and as regulated by the Texas Office of Consumer Credit Commissioner, DebtWave's exemption under 7 TAC § 33.53 remains in place and DebtWave may conduct limited money transmission only as necessary to provide debt management services to contractual debt management clients.
2. Within 7 days of the Effective Date of this Order, DebtWave will have delivered to the Department a check in the amount of \$19,700 made payable to the Texas Department of Banking as an initial payment towards their administrative penalty of \$67,000. DebtWave will make additional payments of \$4,300 each month for the 11 months

following the effective date of this Order until the total amount of the administrative penalty has been paid. These additional payments will be due to the Department by the 15th of each month and shall be made payable to the Texas Department of Banking. If DebtWave fails to make any monthly payment within five days of the due date, the entire penalty amount remaining becomes immediately due.

EFFECTIVE DATE

This Order against Respondent is effective on July 18th, 2016, and subject to its terms, Respondent may not appeal.

Signed on this 18th day of July, 2016.

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

AGREED AS TO FORM AND SUBSTANCE:

DebtWave Credit Counseling, Inc.

By: /s/ Antony Murigu
Antony Murigu
President

Date: July 13, 2016

APPROVED AS TO FORM:

/s/ Jonathan L. Pompan
Jonathan L. Pompan
Venable LLP
Counsel for DebtWave Credit Counseling, Inc.

Date: July 13, 2016

/s/ Catherine Reyer for
Brenna McGee
Assistant General Counsel
Texas Department of Banking

Date: July 14, 2016