

ORDER NO. 2018-016

IN THE MATTER OF:	§	BEFORE:
	§	
JETPAY CORPORATION	§	THE BANKING
ALLENTOWN, PENNSYLVANIA	§	
	§	
AND	§	COMMISSIONER OF TEXAS
	§	
JETPAY HR & PAYROLL SERVICES,	§	
INC.	§	
ALLENTOWN, PENNSYLVANIA	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, in the matter of JetPay Corporation and JetPay HR & Payroll Services, Inc. (JetPay or Respondents) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. JetPay Corporation is a corporation located in Allentown, Pennsylvania.
2. JetPay HR & Payroll Services, Inc. is a wholly-owned subsidiary of JetPay Corporation located in Allentown, Pennsylvania.
3. The Texas Department of Banking (Department) has jurisdiction over JetPay 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.
4. JetPay has been properly notified of its right to an administrative hearing under Chapter 151.
5. The undersigned representative of JetPay has full authority to enter into and bind JetPay to the terms and conditions of this Consent Order.
6. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.203, 151.301, 151.302, 151.306, 15.307, 151.702, 151.706, and 151.707.
7. Any violation of this Order could subject JetPay 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.
8. For purposes of this proceeding, JetPay knowingly and voluntarily waives:
 - a. Service upon JetPay 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. JetPay and the Commissioner agree to this Order solely for the purpose of this proceeding, and without JetPay admitting or denying any violations of law or regulations. This Order does not constitute an admission by JetPay that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
10. The Commissioner has considered this matter and finds as follows:
- a. JetPay offers many diverse products and services to consumers across the United States. Relevant to this Order, it provides payroll and tax filing services to businesses. In the payroll arena, JetPay sends funds from an employer's bank account to its employees by either depositing them into an employee's bank account via ACH or placing the funds on a prepaid card. JetPay's tax filing services operate similarly. In those transactions, it calculates the amount of federal, state, and local taxes for employers and then transmits the calculated amount via ACH to JetPay's bank account. When taxes become due, JetPay generates a pay advice statement to the taxing entity with the detail of taxes paid and remits the amount due via check or ACH. JetPay receives a fee for performing both of these services.
 - b. In 2017, the Department became aware that JetPay has been offering its services to Texas residents since 2013.
 - 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). In receiving businesses' funds and compensation for a promise to make the funds available to taxing authorities and various businesses' employees, JetPay is engaging in the business of 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, JetPay is conducting money transmission in Texas. The Department has not licensed JetPay; JetPay is not an authorized delegate of a license holder; JetPay is not excluded from licensure under Chapter 151; and JetPay has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that JetPay is in violation of Finance Code § 151.302.
- f. As a result of these violations, the Commissioner issued an Order to Cease and Desist Activity, Order Number 2018-010, on April 2, 2018. JetPay requested a hearing on the Order to Cease and Desist, therefore it is not yet effective.
- g. The Department issued a Notice of Hearing on April 19, 2018, Docket No. BM-1805-17-048, to determine whether the Order to Cease and Desist should be made effective.
- h. On May 25, 2018, the Department issued a First Amended Notice of Hearing, which set for hearing issues of whether the Cease and Desist Order should be made effective and whether administrative penalties should be assessed for the violations of the Finance Code. The hearing was set for June 28, 2018.
- i. As required by Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, JetPay’s compliance history, and JetPay’s good faith in attempting to comply with Chapter 151. The Commissioner finds that JetPay’s violations were serious because JetPay conducted money transmission activities in Texas without a license and therefore did not provide Texas customers with the requisite protections or perform the required recordkeeping functions included with an anti-money laundering program of a licensee. Additionally, the Commissioner finds JetPay’s prior compliance history unacceptable because it conducted money transmission without a license.
- j. Based on these findings and based on the representations made by JetPay 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 \$59,250.00 is appropriate.

11. JetPay has agreed to comply with the terms that are set out in the Order below.

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

Order

It is hereby ORDERED, ADJUDGED and DECREED that:

1. By September 15, 2018, JetPay will have delivered to the Department a check made payable to the Texas Department of Banking in the amount of \$59,250.00 as payment of the administrative penalty.
2. Within seven days of the Effective Date of this Order, JetPay will apply for a temporary license under Finance Code § 151.306 and attest that they can meet all licensing requirements. Pursuant to Finance Code § 151.306(a)(1), JetPay will submit a completed application for a permanent license within 60 days of receiving the temporary license.
3. In the event that JetPay's temporary or permanent license application is not received by the above required dates, 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, JetPay will do the following:
 - a. Within 15 days of the Department's notification to JetPay of said late filing, suspension, abandonment or denial, notify its existing Texas customers that it will cease providing money transmission services to them. This includes business conducted directly or through the activity of others and includes but is not limited to advertising and soliciting persons in Texas, and the acceptance of customers who are located in Texas. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
 - b. Within 30 days of the Department's notification to JetPay of said late filing, suspension, abandonment or denial, cease and desist from engaging in the unauthorized business of money transmission in Texas;
 - c. Within 60 days of the Department's notification to JetPay of said late filing, suspension, abandonment or denial, return to its customers all customer funds held by JetPay; and

- d. Within seven days of achieving full compliance with this paragraph, JetPay must confirm to the Department in writing that it has ceased all unlicensed activities in Texas and that any pending transactions with Texas customers have been completed or funds have been returned to the original customer.

Effective Dates

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

Signed on this 9TH day of July, 2018.

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

AGREED AS TO FORM AND SUBSTANCE

JetPay Corporation

/s/ Peter B. Davidson
By: Peter B. Davidson
Date: June 26, 2018

JetPay HR & Payroll Services, Inc.

/s/ Peter B. Davidson
By: Peter B. Davidson
Date: June 26, 2018

APPROVED AS TO FORM:

/s/ Timothy Micah Dortch
Timothy Micah Dortch
The Potts Law Firm
Counsel for JetPay Corporation and JetPay HR & Payroll Services, Inc.
Date: June 26, 2018

/s/ Marcus Adams
Marcus Adams
Assistant General Counsel
Texas Department of Banking
Date: June 26, 2018