

ORDER NO. 2018-031

IN THE MATTER OF:

PAY USA, INC

**KING OF PRUSSIA,
PENNSYLVANIA**

§ BEFORE:

§

§ THE BANKING

§ COMMISSIONER OF TEXAS

§

§ AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

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

1. Pay USA is a Pennsylvania corporation with its principal office located in King of Prussia, Pennsylvania.
2. The Texas Department of Banking (“Department”) has jurisdiction over Pay USA and the subject matter of this proceeding pursuant to *Texas Finance Code* (“Finance Code”) Chapter 151 (“Chapter 151”).
3. 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. Pay USA has been properly notified of its right to an administrative hearing under Chapter 151.
5. The undersigned representative of Pay USA has full authority to enter into and bind Pay USA 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 §§151.301, 151.302, 151.702, 151.706, and 151.707.

7. Any violation of this Order could subject Pay USA 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, Pay USA knowingly and voluntarily waives:
 - a. Service of process upon Pay USA 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. Pay USA and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Pay USA admitting or denying any violations of law or regulations. This Order does not constitute an admission by Pay USA that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
10. Pay USA has agreed to comply with the terms that are set out in the Order below. Additionally, Pay USA has voluntarily ceased all transactions with Texas customers. Pay USA agrees to obtain a license from the Department if a decision is made to resume business in Texas.

11. Nothing in this Order shall prohibit Pay USA 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 past, current, or future violations by Pay USA that come to the attention of the Department.

I. Findings of Fact

13. The Commissioner has considered this matter and finds as follows:
 - a. Pay USA offers payroll processing and tax remittance services whereby it receives funds from employers (“Customer”) and remits such funds to state and federal taxing authorities.
 - b. As part of its state and federal income tax remittance services, Pay USA collects tax funds from Customer’s bank accounts, deposits such funds in a bank account owned and controlled by Pay USA, and thereafter remits such funds to the appropriate taxing authority. Between 2014 and 2018, Pay USA provided these tax remittance services to Texas customers.
 - 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 customers’ tax funds for a promise to make the tax funds available at a later time and/or location, Pay USA has engaged 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, Pay USA has conducted money transmission in Texas. The Department has not licensed Pay USA; Pay USA is not an authorized delegate of a license holder; Pay USA is not excluded from licensure under Chapter 151; and Pay USA has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Pay USA has violated Finance Code §151.302.
- f. As required by Finance Code §151.707(d), the Commissioner has considered the seriousness of the violations, Pay USA’s compliance history, and Pay USA’s good faith in attempting to comply with Chapter 151. The Commissioner finds that Pay USA’s violations were serious because Pay USA 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 Pay USA’s prior compliance history unacceptable because it conducted money transmission without a license.
- g. Based on these findings and based on the representations made by Pay USA as to the volume of transactions and length of time it conducted unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$50,820.00 is appropriate.

II. Order

It is hereby ORDERED, ADJUDGED and DECREED that:

14. By November 20, 2018, Pay USA will have delivered to the Department either a check made payable to the Texas Department of Banking in the amount of \$50,820.00, or wired these funds per instructions from the Department, as payment in full of the administrative penalty assessed herein.
15. Pay USA shall not conduct, directly or through the activity of others, any money transmission as defined by Texas Finance Code Chapter 151, with or on behalf of Texas customers, nor will it advertise or solicit persons in Texas for money transmission, without first obtaining a money transmission license from the Texas Department of Banking.

III. Effective Dates

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

Signed on this 1st day of November, 2018.

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

AGREED AS TO FORM AND SUBSTANCE

Pay USA, Inc,
a Pennsylvania limited liability company

By: /s/ Karen Duncan
Name: Karen Duncan
Its: Chief Operating Officer

Date: October 31, 2018

APPROVED AS TO FORM:

/s/ Troy E. Leitzel
Mr. Troy E. Leitzel
Miller Turetsky Rule & McLennan
Respondent Attorney

Date: November 1, 2018

/s/ Cristina M. Nahidi
Cristina M. Nahidi
Texas Department of Banking
Assistant General Counsel

Date: November 1, 2018