

ORDER NO. 2019-026

IN THE MATTER OF:

**AVALON FINANCIAL CORP.
WESTLAKE, OHIO**

§ **BEFORE THE BANKING**
§
§
§ **COMMISSIONER OF TEXAS**
§
§
§ **AUSTIN, TRAVIS COUNTY, TEXAS**

ORDER TO CEASE AND DESIST ACTIVITY

On this day, the matter of Avalon Financial Corp., Westlake, Ohio, was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

Findings of Fact

1. Avalon Financial Corp. (Respondent) is a for-profit corporation located in Westlake, Ohio. Respondent is registered with FinCEN as a money services business and is licensed with the Ohio Department of Commerce (ODC) as a money transmitter.
2. The Texas Department of Banking (Department) has not licensed Respondent to engage in the business of money transmission or advertise, solicit, or hold itself out as a person who engages in money transmission in this state.
3. Respondent is a third-party bill payer that offers customers a bi-weekly payment service advertised to accelerate the repayment of the customer's existing loans.
4. Through its "Accelerated Loan Repayment Program" Respondent debits a customer's bank account, places the funds in an account held by Respondent, and then distributes those funds at a later time to the appropriate payee. Respondent is compensated in return for offering this bill pay service.

5. Under *Texas Finance Code* §151.301(b)(4), money transmission is defined as “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.” Through its bill pay service, Respondent receives money or monetary value in exchange for a promise to distribute the money or monetary value at a later time. Under the definitions provided in §151.301(b), this activity constitutes money transmission.
6. Under *Texas Finance Code* §151.302(a), “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 the person is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
7. In addition to not being licensed by the Department, Respondent is not an authorized delegate of a license holder, Respondent is not excluded from licensure under Chapter 151, and Respondent has not been granted an exemption under Chapter 151.
8. The Department first came into contact with Respondent in 2012. The Department sent Respondent a letter on March 30, 2012, requesting information regarding Respondent’s money transmission activity in Texas.
9. On April 23, 2012, Respondent sent the Department a letter in response, describing itself as a “bill paying service” and stating that Respondent had “not entered into any agreements with companies from Texas” and had “not engaged in any money service transmissions in the State of Texas.” Respondent further stated that it would “continue not conducting any business in the State of Texas” and would “ensure no companies in the State of Texas will be contacted in the future” unless Respondent obtained a money transmission license in this state.

10. On May 17, 2012, the Department sent Respondent a letter requiring that Respondent modify its website to state that Respondent does not provide services to Texas residents and stating that the Department would pursue no further action at that time based upon the statements made by Respondent in the April 23, 2012 letter.
11. On June 27, 2019, the Department was informed that Respondent is offering its bi-weekly payment service to residents in Texas.
12. On June 28, 2019, the Department was provided information that Respondent currently has 285 active customers in Texas.
13. On July 10, 2019, the Department received copies of agreements entered into by Respondent and customers located in Texas between 2015 and 2019.
14. On August 8, 2019, the Department sent Respondent a letter giving notice that the Department was made aware that Respondent was engaging in the business of money transmission in this state without a license. The letter required Respondent to provide information of Texas customers to the Department by August 22, 2019. The letter further required Respondent, by September 7, 2019, to either apply for a temporary license or cease performing all money transmission business in Texas with respect to new customers and within sixty (60) days of that date, take necessary steps to cease performing the identified money transmission business in Texas with respect to customers currently under contract. Respondent failed to respond to the Department's letter.

Conclusions of Law

1. The Commissioner is authorized by *Texas Finance Code* §151.702 to issue a cease and desist order to an unlicensed person whom the Commissioner believes has engaged or is likely to engage in an activity for which a license is required by Chapter 151.

2. The Commissioner finds by credible evidence that Respondent has violated *Texas Finance Code* §151.302 by engaging in the business of money transmission in Texas without a license, as described above.
3. The Commissioner finds by credible evidence that Respondent has violated *Texas Finance Code* §151.708 by knowingly engaging in the business of money transmission in Texas without a license, as described above.
4. The Commissioner finds this violation constitutes sufficient cause under *Texas Finance Code* §151.702 for issuance of an order to cease and desist from conducting any money transmission in Texas.

Order

In accordance with *Texas Finance Code* §§151.302 and 151.702, Respondent is **ORDERED** to cease and desist from engaging in the unauthorized business of money transmission in Texas with respect to new customers, including advertising to and solicitation of persons in Texas, whether conducted through Respondent's activities or through those of others. Respondent is further **ORDERED** within fourteen (14) days of the effective date of this Order, to provide the Department with detailed information pertaining to any and all Texas customers including the name, address, and amount of money transmitted since April 23, 2012. Respondent is further **ORDERED** within thirty (30) days of the effective date of this Order, to notify its existing Texas customers in writing, that it will cease providing bill payment services to them, and to make reasonable efforts to ensure that these customers understand their responsibilities to resume making their own payments. Respondent is further **ORDERED** within ninety (90) days of the effective date of this Order, to cease and desist from engaging in the unauthorized business of money transmission in Texas with respect to customers currently under contract at the time this Order becomes effective. Respondent is further **ORDERED** within seven (7) days of achieving

full compliance with this Order, to notify the Department in writing that it has fully complied with the Order and ceased all unlicensed activities in Texas.

No Waiver

The Department does not waive its right to seek any other legal remedies or recourse, including but not limited to administrative penalties, regarding the above described violations by Respondent and/or any additional violations by Respondent not now known to the Department that come to the attention of the Department.

Effective Date

Pursuant to *Texas Finance Code* §§151.702 and 151.709, this Order to Cease and Desist Activity takes effect twenty-one (21) days after the date it is mailed.

Notice of Right to Hearing

Under *Texas Finance Code* §151.709, Respondent has the right to request a hearing on this Order. If Respondent wishes to file such a request, it must be made in writing and must be submitted to the Commissioner no later than the twentieth (20) day after the date this Order is mailed to Respondent.

Signed on this 9th day of September, 2019.

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

Certificate of Service

Pursuant to **Texas Finance Code** §151.709(b)(3), this Order to Cease and Desist Activity will be served on Respondent by first class mail and certified mail, return receipt requested, sent on September 10, 2019 to:

CMRRR No. 91 7199 9991 7031 6327 4584:

Jerry Sloan
President
Avalon Financial Corp.
24803 Detroit Road, Suite 5
Westlake, Ohio 44145

CMRRR No. 91 7199 9991 7031 6327 4577:

Jerry Sloan
Registered Agent
Avalon Financial Corp.
1463 Warrensville Road, Suite 201
South Euclid, Ohio 44121

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