ORDER NO. 2020-010 Docket No. BM-2001-19-231

IN THE MATTER OF: **BEFORE THE BANKING**

AVALON FINANCIAL CORP. **COMMISSIONER OF TEXAS**

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AUSTIN, TRAVIS COUNTY, TEXAS WESTLAKE, OHIO

FINAL ORDER

The Banking Commissioner of Texas, after review and consideration of the attached Proposal for Decision issued by the Administrative Law Judge on March 12, 2020, and the Findings of Fact and Conclusions of Law contained therein, hereby accepts and adopts the Findings of Fact and Conclusions of Law as his own.

The Commissioner further finds that an administrative penalty in the amount of \$300,000.00 is reasonable and appropriate after considering the facts of this case, the factors set forth in Texas Finance Code Section 151.707 for determining the amount of a penalty, and the recommendations of the department staff and the administrative law judge.

IT IS, THEREFORE, ORDERED that an administrative penalty in the amount of \$300,000.00 be and is hereby ASSESSED against Avalon Financial Corp., Westlake, Ohio.

ACCORDINGLY, IT IS ORDERED that Avalon Financial Corp. pay an administrative penalty in the amount of \$300,000.00 to the Texas Department of Banking.

All relief that was requested but not granted or otherwise disposed of herein is denied.

SIGNED and ENTERED this 7th day of April, 2020.

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

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IN THE MATTER OF:	§	BEFORE THE BANKING
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	§	
AVALON FINANCIAL CORP.	§	COMMISSIONER OF TEXAS
	§	
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WESTLAKE, OHIO	Ş	AUSTIN, TRAVIS COUNTY, TEXAS

PROPOSAL FOR DECISION

This Proposal for Decision is issued following consideration of the record from a contested case hearing that was conducted on March 5, 2020.

STATEMENT OF THE CASE

This is an enforcement action which the staff of the Department of Banking initiated against Avalon Financial Corp. ("Respondent") concerning charges of violations of Texas Finance Code Chapter 151, involving Subchapters D and H. The charges are set forth in the Notice of Hearing signed on February 7, 2020.

Appearances

Respondent did not appear at the hearing. Department staff appeared at the hearing, represented by Alice Geyer, Assistant General Counsel. Jay Kim, Financial Examiner, testified on behalf of the staff.

Applicable Law

Texas Finance Code Chapter 151, Regulation of Money Services Businesses, has the requirements for the regulation of "money transmission" in Texas. Chapter 151, Subchapter D, Money Transmission License, provides the requirements regarding money transmission licenses. Chapter 151, Subchapter H, authorizes the assessment of an administrative penalty for violations of the requirements of Subchapter D and includes the factors for determining the amount of the penalty.

Discussion

Exhibits 1-5 were admitted into evidence and show that Respondent was given notice of hearing more than 20 days before the hearing was set to commence. Respondent did not appear at the time set for the hearing and the hearing was conducted as a default hearing under 7 Tex. Admin. Code §9.12. The evidence shows that Respondent also failed to respond to other staff communications asserting violations of Texas law regarding its money transmission business conducted in Texas. The allegations of the Notice of Hearing and the evidence admitted at the hearing show that Respondent conducted money transmission services in Texas since 2015 without a money transmission license as required under Finance Code Chapter 151. As a result of Respondent's violations of Finance Code Chapter 151, Department staff recommended an administrative penalty in the amount of \$300,000.00, based on the amount of money transmission business Respondent conducted in Texas and Respondent's lack of good faith and wilful disregard of Texas law.

FINDINGS OF FACT

The Administrative Law Judge deems as true the allegations contained in the Notice of Hearing signed on February 20, 2020; and, based on the allegations, the evidence of record, and applicable law, makes these findings of fact and conclusions of law.

- 1. Avalon Financial Corp. is a money services business that is located at 24803 Detroit Road, Suite 5, Westlake, Ohio, 44145.
- 2. The President of Avalon Financial Corp. is Jerry Sloan, whose address is Avalon Financial Corp., 24803 Detroit Road, Suite 5, Westlake, Ohio, 44145.
- 3. Brian Zeid is a Partner of Avalon Financial Corp., whose address also is Avalon Financial Corp., 24803 Detroit Road, Suite 5, Westlake, Ohio, 44145.
- 4. Notice of Hearing for this matter, signed by Charles Cooper, Commissioner of the Texas Department of Banking, on February 7, 2020, asserted violations by Respondent of Finance Code

Chapter 151.302 concerning unauthorized money transmission activities, and set the date and time

for a hearing to be conducted on March 5, 2018, at 1:30 p.m., for the purpose of determining whether

to assess an administrative penalty against Respondent, with Department staff's intention of seeking

an administrative penalty in the amount of \$300,000. EXHIBIT 1

5. The Notice of Hearing was delivered to Mr. Sloan on February 13, 2020, and was delivered

to Mr. Zeid on the same day. EXHIBIT 2

6. Respondent failed to appear at the hearing on March 5, 2020.

7. In June and July, 2019, the Ohio Department of Commerce provided information to the

Department about how much dollar volume of money transmission business the Respondent

conducted with Texas customers from 2015 through 2019, including the number of Texas customers

and copies of agreements entered into by Respondent and Texas customers.

8. The Department of Banking sent a letter dated August 8, 2019, via certified mail, return receipt

requested, addressed to Jerry Sloan, President of Avalon Financial Corp., 24803 Detroit Road, Suite

5, Westlake, Ohio, 44145, which asserted violations of Finance Code Chapter 151 by Respondent,

and directed Respondent to provide relevant information and to apply for a temporary license or cease

performing all money transmission business in Texas. Exhibit A of EXHIBIT 1. The letter was

delivered as addressed to Respondent on August 12, 2019, with a signed receipt of delivery. EXHIBIT

3

9. Respondent did not respond to the letter dated August 8, 2019.

10. On September 9, 2019, Commissioner Cooper signed an Order to Cease and Desist Activity

concerning Respondent's money transmission business in Texas, which contained findings of fact and

conclusions of law that Respondent violated Texas laws concerning money transmission and ordered

Respondent to cease and desist from engaging in the unauthorized business of money transmission in

Texas. Exhibit B of EXHIBIT 1

11. The September 9, 2019, Order to Cease and Desist Activity was sent on September 10, 2019,

via certified mail, return receipt requested, addressed to Jerry Sloan, President of Avalon Financial

Corp., 24803 Detroit Road, Suite 5, Westlake, Ohio, 44145, Exhibit B of EXHIBIT 1. The letter was

delivered as addressed on September 13, 2019, with a signed receipt of delivery. EXHIBIT 4

12. Respondent did not respond to the Order to Cease and Desist Activity and did not request a

hearing on the order.

13. The Department of Banking sent a letter on January 13, 2020, via certified mail, return receipt

requested, addressed to Jerry Sloan, President of Avalon Financial Corp., 24803 Detroit Road, Suite

5, Westlake, Ohio, 44145, and via email, which gave notice that an administrative penalty hearing

would be set if Respondent did not contact the Department within two weeks. The letter also contained

a copy of the September 19, 2019, Order to Cease and Desist Activity. Exhibit C of EXHIBIT 1. The

letter with the order was delivered as addressed on January 16, 2020, with a signed receipt of delivery.

EXHIBIT 5

14. Respondent had previously responded to a letter from the Department of Banking dated March

30, 2012, which gave notice and requested a response, with its letter dated April 23, 2012, to the

Department. In its response, Respondent described itself as a bill paying service and stated: it had not

entered into any agreements with companies from Texas, it had not engaged in any money service

transmissions in the State of Texas, it would continue not conducting any business in the State of

Texas, and it would ensure no companies in the State of Texas will be contacted in the future unless

it obtained a money transmission license in Texas.

15. From 2015 through 2019, Respondent conducted business in Texas as a bi-weekly bill paying

service with its activities of receiving money from customers in Texas in exchange for a promise to

make the money available to the customers' creditors at a later time or different location, and of paying

Docket No. BM-2001-19-231, Avalon Financial Corp. Proposal for Decision

Page 5

the bills from the customers' creditors with that money, receiving compensation for performing those

services.

16. As of June 28, 2019, Respondent had 285 active customers of its bill paying services in Texas.

17. During the period of 2015 through 2019, Respondent did not have a Texas money transmission

license, was not an authorized delegate of a license holder, was not excluded from licensure under

Finance Code Chapter 151, and had not been granted an exemption from licensure under Chapter 151.

18. Respondent's conduct of business in violation of Texas laws, as is described in these Findings

of Fact, was knowing and willful. Respondent's knowledge of the need for a money transmission

license to conduct its bill paying services for customers in Texas is evidenced by its letter dated April

23, 2012. For at least five years, Respondent conducted the business of money transmission in Texas

without a licence or other sanction under Finance Code Section 151.302 after assuring the Department

in 2012 that it would not do so. Respondent ignored or disregarded the Department's notices of

violation and the Department's Order to Cease and Desist Activity that was signed on September 9,

2019. Respondent's activities not only demonstrate a lack of good faith in attempting to comply with

Finance Code Chapter 151, they demonstrate a wilful disregard of the requirements of Texas law for

conducting money transmission activities and of the September 9, 2019 Order to Cease and Desist

Activities.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely given to Respondent.

2. The Commissioner of Banking has jurisdiction of this matter to enforce the Finance Code

provisions that require a business conducting money transmission services to comply with the

requirements of Finance Code §151.302.

3. The Order to Cease and Desist Activities signed on September 9, 2019, became effective

twenty-one (21) days after September 10, 2019, pursuant to Finance Code Section 151.709(c).

Docket No. BM-2001-19-231, Avalon Financial Corp. Proposal for Decision

Page 6

4. The allegations of the Notice of Hearing signed on February 7, 2020 are deemed true as a

result of Respondent's failure to appear at the hearing on March 5, 2020, after having timely received

proper notice of hearing.

5. Respondent conducted the business of money transmission in Texas by receiving

compensation or expecting to receive compensation, directly or indirectly, for performing bill paying

services to Texas customers from 2015 through 2019, as further described in the Findings of Fact.

6. Respondent violated Finance Code Section 151.302 by conducting the business of money

transmission during the period from 2015 through 2019 without a money transmission license or

another means of compliance under the Section 151.302.

7. Respondent demonstrated a willful disregard of the requirements of Finance Code Section

151.302 from 2015 through 2019, and of the Order to Cease and Desist signed on September 9, 2019.

8. The Commissioner of Banking, in his discretion, has the authority under Finance Code Section

151.707(c) to assess an administrative penalty in an amount up to \$5,000 for each violation or, in the

case of a continuing violation, \$5,000 for each day that the violation continues.

9. Giving consideration of the factors for determining the amount of an administrative penalty

that are set forth in Finance Code Section 151.707, an administrative penalty against Avalon Financial

Corp. in the amount of \$300,000 is reasonable for the violations of Finance Code Section 151.302

that are set forth herein.

RECOMMENDATION

As Administrative Law Judge, I recommend an order that adopts the foregoing Findings

of Fact and Conclusions of Law, and that assesses an administrative penalty in the amount of

\$300,000.

Respectfully submitted, /s/ Donald N. Walker

Donald N. Walker

Administrative Law Judge

Docket No. BM-2001-19-231, Avalon Financial Corp. Proposal for Decision

Page 7

SIGNED: March 12, 2020