

ORDER NO. 2014-015b

IN THE MATTER OF:

**SMART PAYMENT PLAN, LLC,
NAPLES, FLORIDA**

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BEFORE:

**THE BANKING
COMMISSIONER OF TEXAS**

AUSTIN, TRAVIS COUNTY, TEXAS

SECOND CONSENT ORDER

On this day, the matter of SMART Payment Plan, LLC, a Florida limited liability company whose principal address is in Naples, Florida (Respondent or SPP), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. SPP is a Florida limited liability company, with its principal address listed as 999 Vanderbilt Beach Road, Suite 200, Naples, Florida 34108.
2. David W. Engelman is the Managing Member, Chief Executive Officer, and Chief Compliance Officer of SPP. His address is 54 Rainey Street, No. 922, Austin, Texas 78701.
3. The Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding pursuant to *Texas Finance Code* 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, 151.706, and 151.707.
4. Respondent has been properly notified regarding its right to an administrative hearing under *Texas Finance Code* Chapter 151 (Chapter 151). Respondent is represented in this matter by Gardere Wynne Sewell, LLP.
5. The statutory provisions relevant to this matter include *Texas Finance Code* §§ 151.203 – 151.205, 151.301 - 151.304, 151.306 - 151.308, 151.701 - 151.702, and 151.705 - 151.707. Regulations at issue in this matter include 7 *Texas Administrative Code* (TAC) §§ 33.13 and 33.27.
6. Any violation of this Order could subject Respondent to additional regulatory or

enforcement actions authorized by *Texas Finance Code* § 151.701, 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 agrees to this Order solely for the purpose of this proceeding, and without admitting or denying any 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. SPP agreed to a Consent Order, which was issued on October 10, 2014. The Consent Order required SPP to file a complete application for a money transmitter license and take other steps, including paying a penalty for conducting unlicensed money transmission business in Texas, all by October 10, 2014.
10. After the Consent Order was signed, Department staff (Staff) realized there were clerical errors in the Consent Order. An Amended Consent Order Nunc Pro Tunc (Amended Order) was signed October 15, 2014, effective October 10, 2014.
11. The Consent Order and Amended Order imposed administrative penalties on SPP. Those penalties were based on the amount of business SPP represented that it had done in Texas. SPP represented that it began conducting money transmission in Texas in 2012 and that, as of August 30, 2014, it had transmitted \$173,512,229.
12. On October 14, 2014, SPP informed the Department that it had actually done business in Texas since 2009 and that the volume of unlicensed money transmission business it

has done in Texas is actually \$254,246,280, which is \$80,724,051 greater than the amount it stated previously, and on which the penalty imposed by the Consent Order and Amended Order was based.

13. The Commissioner has considered the matter and finds as follows:

- a. The Commissioner incorporates by reference as if fully set forth herein the findings stated in paragraph 9(a)-(l) of the Amended Consent Order Nunc Pro Tunc.
- b. On October 15, 2014, Staff filed a Second Amended Notice of Hearing to have the issue of the imposition of administrative penalties heard on October 27, 2014. The parties agreed to have the October 16, 2014 hearing continued until October 27, 2014.
- c. 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 very serious because (1) SPP is required to be a licensed money transmitter in Texas but has been operating without said license; and (2) SPP has contracted with over 23,000 Texas residents and transmitted at least \$254,246,280 for at least five years without the protections in place that are required of a company that holds a money transmission license.
- d. The Commissioner finds SPP's prior compliance history unsatisfactory and that it has not acted in good faith because it failed to apply for a Texas money transmitter license and, when providing information to the Department for the Consent Order issued October 10, 2014, failed to accurately represent both the volume of unlicensed money transmission business it has conducted in Texas and the length of time it has been conducting an unlicensed money transmission business in Texas.
- e. Based on these findings and based on the representations made by SPP 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 \$130,000 is appropriate, of which SPP has paid \$90,000 to date.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that:

14. SPP will pay the Department an additional administrative penalty of \$40,000, for a total paid of \$130,000. The \$40,000 penalty will be due by a check made payable to the Texas Department of Banking and delivered to the Department by 5:00 p.m. on October 23, 2014.
15. If SPP fails to pay the \$40,000 penalty by October 23, 2014, SPP shall be required to pay a penalty of \$80,000 by a check made payable to the Texas Department of Banking and delivered to the Department by 5:00 p.m. on by October 30, 2014. If the \$80,000 penalty is imposed, the total penalty paid by SPP will be \$170,000.
16. If SPP fails to pay the additional penalty by the relevant due date specified above, the default will constitute the October 31 Event of Default, and SPP's application for a money transmitter license will be denied as of October 31, 2014.
17. If the October 31 Event of Default occurs, the Department will mail the October 31 Default Notice to SPP's counsel, Leslie Ritchie Robnett, Gardere Wynne Sewell LLP, 600 Congress Avenue, Suite 3000, Austin, TX 78701.
18. On the date the Department mails the October 31 Default Notice (the October 31 Default Notice Date), SPP will be required to:
 - a. Within 15 days of the October 31 Default Notice Date, notify its existing Texas customers that it will cease providing bill payment services to them, and make reasonable efforts to ensure that these customers understand their responsibilities to resume making their own payments. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department.
 - b. Within 120 days of the October 31 Default Notice Date, cease and desist from servicing customers currently under contract at the time of the October 31 Default Notice Date and have returned to its customers all customer funds held by SPP for payment of loans.
 - c. Within seven days of achieving full compliance with this paragraph, SPP must confirm to the Department in writing that it has ceased all unlicensed activities

in Texas.

- d. SPP knowingly and voluntarily waives any rights, including those listed in paragraph 7 of this Order, with regard to the imposition of the requirements after the October 31 Event of Default.
19. All the provisions of the Amended Consent Order Nunc Pro Tunc are still in effect except to the extent that they conflict with this Order. In case of conflict, the provisions in this Order control.
20. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other past, current, or future violations by Respondent that come to the attention of the Department.

Effective Date

This Order against Respondent is effective on October 17, 2014, and subject to its terms, Respondent may not appeal.

Signed on this 17th day of October, 2014

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

AGREED AS TO FORM AND SUBSTANCE:

SMART Payment Plan, LLC.

By: /s/ David Engelman
David Engelman
Managing Member, Chief Executive Officer, and Chief Compliance Officer

Date: 10/16/14

APPROVED AS TO FORM:

/s/ Leslie R. Robnett
Leslie Ritchie Robnett
Counsel for SMART Payment Plan, LLC

Date: 10/16/14

/s/ Deborah H. Loomis
Deborah H. Loomis
Deputy General Counsel
Texas Department of Banking
Date: October 17, 2014