

ORDER NO. 2014-015c

IN THE MATTER OF:

SMART PAYMENT PLAN, LLC,
NAPLES, FLORIDA

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BEFORE:

THE BANKING
COMMISSIONER OF TEXAS

AUSTIN, TRAVIS COUNTY, TEXAS

THIRD 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 and Chief Executive Officer, and, as of February 27, 2015, was the 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) pursuant to *Texas Finance Code* §§ 151.702, 151.705, and 151.706.
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 Greenspoon Marder, P.A.
5. The statutory provisions at issue in this matter include *Texas Finance Code* §§ 151.201 - 151.205, 151.301 - 151.305, 151.702, and 151.705 - 151.706. The regulation at issue in this matter is 7 *Texas Administrative Code* (TAC) § 33.13.
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 and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent's 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. The Commissioner has considered the matter and finds as follows:
 - a. The Commissioner and SPP entered into Amended Consent Order Nunc Pro Tunc No. 2014-015a, effective October 10, 2014.
 - b. The Commissioner and SPP entered into Second Consent Order No. 2014-015b, effective October 17, 2014.
 - c. The findings of Orders Nos. 2014-015a and 2104-015b are incorporated herein as if fully set forth.
 - d. The Department regulates money transmission under the authority of *Texas Finance Code* Chapter 151, Subchapter B.
 - e. The Department has not licensed SPP to engage in the business of money transmission in Texas.
 - f. *Texas 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. Because SPP's website advertises bill payment services and because SPP is currently making third

party bill payments for over 23,000 consumers in Texas, SPP is in violation of Texas Finance Code § 151.302(a).

- g. SPP submitted an application for a money transmitter license. Pursuant to the terms of Orders Nos. 2014-015a and 2104-015b, SPP has been allowed to continue to provide bill payment services to its existing customers while its license application was pending with the Department.
 - h. SPP has decided to withdraw its application for a license.
 - i. SPP's license application is withdrawn effective March 20, 2015 (the Withdrawal Date).
 - j. SPP has agreed to comply with the terms that are set out in the Order below.
10. After twelve months from the date of this Order, nothing in this Order shall prohibit the Respondent from submitting a new application to the Department assuming full compliance with this Order and all applicable laws.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that SPP will do the following:

- 11. Within 15 days of the Withdrawal Date, notify its existing Texas customers that it will cease providing bill payment services to them, and make reasonable efforts to communicate with and ensure that these customers understand their responsibilities to resume making their own payments or they may engage with an independent, properly licensed replacement provider of services at each customer's own discretion and choosing. This notification must be made in writing, and a copy of the notice must be sent to the Department for approval within 10 days of the Withdrawal Date.
- 12. Within 120 days of the Withdrawal Date, stop engaging in the business of money transmission in Texas with respect to customers currently under contract at the time of the notification.
- 13. Within 120 days of the Withdrawal Date, return to its customers all funds held by SPP for payment of loans and any other funds that are due to the customers.
- 14. Within seven days of achieving full compliance with this paragraph, confirm to the Department in writing that it has ceased all unlicensed activities in Texas.

It is further ORDERED that the parties to this Order shall each be responsible for their own fees and costs associated with this matter.

Effective Date

This Order against Respondent is effective on March 20, 2015, and subject to its terms, Respondent may not appeal.

Signed on this 23rd day of March, 2015.

/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: March 20, 2015

APPROVED AS TO FORM:

/s/ Robby H. Birnbaum

Robby H. Birnbaum

Greenspoon Marder, P.A.

Counsel for SMART Payment Plan, LLC

Date: March 20, 2015

/s/ Deborah H. Loomis

Deborah H. Loomis

Deputy General Counsel

Texas Department of Banking

Date: March 23, 2015