

ORDER NO. 2016-004

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| IN THE MATTER OF: | § BEFORE THE BANKING |
| | § |
| TELMATE, LLC | § COMMISSIONER OF TEXAS |
| | § |
| ONTARIO, OREGON | § AUSTIN, TRAVIS COUNTY, TEXAS |

CONSENT ORDER

On this day, the matter of Telmate LLC, a Delaware company whose principal address is in Ontario, Oregon (Respondent), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

1. Respondent is a Delaware company, with its principal address listed as 1108 SE 6th Street, Ontario, Oregon 97914. Respondent’s mailing address is 655 Montgomery Street, 18th floor, San Francisco, California 94111. Respondent operates on the Internet through its webpage located at <https://www.gettingout.com/>.
2. Kevin O’Neil is the President of Respondent.
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, 151.706, 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 Morrison & Foerster LLP.
5. The statutory provisions at issue in this matter include *Texas Finance Code* §§ 151.301 - 151.302, 151.306, 151.702, and 151.706 - 151.707.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by *Texas Finance Code* Chapter 151, Subchapter H, 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 stated in this Order;
 - 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 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. Since 2009, Respondent has been offering certain money transmission services in Texas in the form of receiving money or monetary value for transmission to inmates. Respondent provides deposit services to inmate trust accounts at correctional facilities. Respondent conducts money transmission online at its website <https://www.gettingout.com/>, through its toll-free telephone system, and via the receipt of money orders and cashier's checks sent and payable to Respondent.
 - b. On January 23, 2015, the Department contacted Respondent regarding its money transmission services in Texas.
 - c. On May 22, 2015, Respondent filed an application for a temporary license under Chapter 151. Respondent was granted a temporary license on June 10, 2015.
 - d. On August 7, 2015, Respondent filed an application for a money transmitter license under Chapter 151. On August 20, 2015, the Department asked Respondent for more information in order to move forward with the application process.
 - e. On November 13, 2015, Respondent's temporary license was extended for an additional 30 days.

- f. On December 10, 2015, Respondent notified the Department that it will be withdrawing its application for a money transmitter license.
- g. On December 13, 2015, Respondent's temporary license expired.
- h. From 2009 to June 9, 2015, Respondent conducted money transmission activities in the State of Texas in violation of *Texas Finance Code* § 151.302. During this time, Respondent did not have a license to provide money transmission services in Texas.
- i. The Department regulates money transmission under the authority of *Texas Finance Code* Chapter 151, Subchapter B.
- j. *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. Respondent transmitted funds into inmate trust accounts for consumers in violation of *Texas Finance Code* § 151.302(a).
- k. 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 serious because Respondent has transmitted money without the protections and recordkeeping requirements in place that are required of a company that holds a money transmission license.
- l. The Commissioner finds Respondent's prior compliance history unsatisfactory because it conducted money transmission business from 2009 to June 9, 2015, without holding a Texas money transmitter license as required and, once Respondent did apply for a Texas money transmitter license, it failed to complete the application process and become licensed.
- m. The Commissioner finds that Respondent did not act in good faith in attempting to comply with Chapter 151 because Respondent's Texas money transmitter license application was deficient in several respects and Respondent did not respond in a timely manner to the Department's requests for additional information.
- n. Based on these findings and based on the representations made by Respondent 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 \$51,040 is appropriate.

10. Respondent has agreed to comply with the terms that are set out in the Order below.
11. Nothing in this Order shall prohibit the Respondent from submitting an application to the Department for a money transmission license or a temporary money transmission license in the future.

ORDER

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

12. Upon the Effective Date of this Order, Respondent will not conduct, directly or through the activity of others, any money transmission, as defined by *Texas Finance Code* Chapter 151, for any customers or inmates in Texas, nor will it advertise or solicit persons in Texas, until a money transmission license is granted by the Texas Department of Banking;
13. Within seven days of achieving full compliance with the preceding paragraph, Respondent will confirm to the Department in writing that it is not conducting money transmission activities, as defined by *Texas Finance Code* Chapter 151, in Texas;
14. Within 10 days of the Effective Date of this Order, Respondent will have delivered to the Department a check made payable to the Texas Department of Banking in the amount of \$51,040 as payment of the administrative penalty;
15. Also within 10 days of the Effective Date of this Order, Respondent will ensure that its website, <http://www.gettingout.com/>, prevents consumers either located in Texas or attempting to transmit funds to an inmate located in Texas from using Respondent's services by blocking: (a) transactions attempted by an Internet Protocol address ("IP address") identified as located in the state of Texas; (b) transactions involving the use of a payment card with a billing address in Texas; and (c) transactions wherein the intended recipient of the funds is located in Texas.
16. Within seven days of achieving full compliance with the preceding paragraph, Respondent will confirm to the Department in writing that the website configurations have been completed;
17. Within 30 days of the Effective Date of this Order, Respondent will return any funds that are held by Respondent and are due to Texas customers; and

18. Within seven days of achieving full compliance with the preceding paragraph, Respondent will confirm to the Department in writing that all funds held by Respondent for Texas customers have been returned to those customers or delivered to the appropriate facility.

EFFECTIVE DATE

This Order against Respondent is effective on February 1st, 2016, and subject to its terms, Respondent may not appeal.

Signed on this 1st day of February, 2016.

/s/ Stephanie Newberg for
Charles G. Cooper
Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

Telmate, LLC

By: /s/ Kevin O'Neal
Kevin O'Neal
President

Date: January 29, 2016

APPROVED AS TO FORM:

/s/ Sean Ruff
Sean Ruff
Morrison & Foerster LLP
Counsel for Telmate, LLC

Date: January 29, 2016

/s/ Brenna McGee
Brenna McGee
Assistant General Counsel
Texas Department of Banking

Date: January 29, 2016