

FILED

2013 OCT -3 PM 1:20

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, BUREAU OF COMPLIANCE :
AND LICENSING :
: :
v. : Docket No. 13 0061 (BNK-CAO)
: :
GENERAL PAYMENT SYSTEMS, INC.. :
d/b/a EZ CARD AND KIOSK :
: :
:

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Compliance and Licensing ("Bureau") has evaluated certain business practices of General Payment Systems, Inc., d/b/a EZ Card and Kiosk ("EZ Card and Kiosk"), and its officers, employees and directors. Based on the results of its evaluation, the Bureau concluded that EZ Card and Kiosk engaged in unlicensed activity in violation of the act of September 2, 1965 (P.L. 490, No. 249), known as the Money Transmitter Act, 7 P.S. §§ 6101-6018 ("MTA"). While EZ Card and Kiosk disputes the Bureau's conclusion and does not admit wrongdoing, the parties seek to resolve this matter amicably to save the time and resources that ongoing litigation would require and, to this end, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("Order").

1. The MTA requires persons engaged in the business of transmitting money in Pennsylvania to be licensed by the Department as a money transmitter.

2. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MTA.

3. The Bureau is primarily responsible for administering and enforcing the MTA for the Department.

4. EZ Card and Kiosk is a Nevada domestic corporation with its principal place of business located at 15375 Barranca Parkway, Suite C-102, Irvine, CA 92618.

5. EZ Card and Kiosk is not, and has never been, licensed by the Department.

BACKGROUND

6. In January of 2012, the Bureau contacted EZ Card and Kiosk to inquire as to its business activities in Pennsylvania.

7. From January of 2012 through June of 2013, the Bureau and EZ Card and Kiosk corresponded concerning whether EZ Card and Kiosk was engaged in the business of transmitting money.

8. Through the correspondence, EZ Card and Kiosk disclosed that it has been providing technology and services to Westmoreland County Prison in Pennsylvania since February 11, 2011.

9. Also, during the period when the parties corresponded, EZ Card and Kiosk began providing technology and services to Butler County Prison on April 16, 2013.

10. The Bureau, based on the results of its investigation and after ongoing correspondence with EZ Card and Kiosk, finds that:

a. EZ Card and Kiosk is a corporation that provides prisons with, *inter alia*, a method by which friends and family ("consumers") may transmit funds into inmates' commissary accounts.

b. Consumers may transmit funds into inmates' accounts by credit or debit cards through a website (www.ezcardandkiosk.com), or by cash or credit or debit cards through lobby kiosks located at the prisons.

c. EZ Card and Kiosk is responsible for removing cash from the lobby kiosks and for the accounting and reporting of money transmissions to the inmates' accounts.

d. EZ Card and Kiosk is also responsible for ensuring that the technology used in its lobby kiosks or on its website transmits the money from the consumers to the inmates' accounts.

e. All transactions flow through an account owned by EZ Card and Kiosk before the transactions are settled into the inmates' accounts.

f. Consumers pay a fee for each transmission they make into the inmates' accounts.

g. Inmates may use their accounts to purchase items while incarcerated or save the money and receive a disbursement upon release from prison.

11. EZ Card and Kiosk believes the following description more accurately sets forth its business:

a. EZ Card and Kiosk is a government contractor providing technology (e.g., websites, kiosks, accounting software) and services (e.g., kiosk maintenance, accounting, fraud management, settlement accounts) to, *inter alia*, county prisons in Pennsylvania ("Prisons").

b. Prisons use these technologies and services to collect payments from consumers for various services provided by the Prisons.

c. EZ Card and Kiosk technology is fully integrated with the Prisons such that

all payments received are credited by the Prisons in real time.

d. Prisons direct consumers to make payments through the kiosks supplied by EZ Card and Kiosk or through web portals (e.g., www.ezcardandkiosk.com).

e. All transactions are between consumers and the Prison. The Prison is the only entity contractually liable to consumers. A full set of terms and conditions are presented to consumers disclosing the parties to the transaction.

f. Consumers may make payments to Prisons by credit transactions through web portals or at kiosks located on the respective Prison's property. PIN debit transactions are not accepted. Consumers are also permitted to make cash payments through the kiosks.

g. The cash payments are at all times the property of the Prison. EZ Card and Kiosk is responsible for removing cash from the lobby kiosks.

h. Similarly, credit payments collected from consumers through web portals and kiosks are at all times the Prison's property.

i. EZ Card and Kiosk has unique settlement accounts for each Prison at an FDIC insured bank. Both the cash and merchant account transactions settle into these accounts. EZ Card and Kiosk then provides a lump sum settlement to the Prison according to an agreed upon schedule.

j. Pursuant to its contract with the Prisons, EZ Card and Kiosk charges consumers a convenience fee for each transaction in lieu of EZ Card and Kiosk taking such a fee from the Prison.

k. All funds collected by EZ Card and Kiosk on behalf of the Prisons, except for the convenience fee, are assets of the Prison and at no point become assets of any other party.

VIOLATION

12. Section 2 of the MTA provides, in relevant part, that: "No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking." 7 P.S. § 6102.

13. A "person" to which Section 2 applies includes an "individual or organization but does not include the governments of the United States or of the Commonwealth of Pennsylvania." 7 P.S. § 6101.

14. A "transmittal instrument" is "any check, draft, money order, personal money order or *method for the payment of money or transmittal of credit*, other than a merchandise gift certificate sold in the regular course of business by a vendor of personal property or services." *Id.* (Emphasis added).

15. The Bureau has historically interpreted the phrase "method for the payment of money or transmittal of credit" to include wire transfers and electronic payment systems.

16. EZ Card and Kiosk is an organization and, therefore, a person to which Section 2 of the MTA applies.

17. The Bureau concludes that EZ Card and Kiosk's business is to transmit money from consumers to the inmates' accounts.

18. The Bureau concludes that EZ Card and Kiosk provides a method to transmit money through its lobby kiosks and website by enabling consumers' payment information and/or money to transfer electronically.

19. EZ Card and Kiosk charges a convenience fee to consumers for each transaction in lieu of taking such a fee from the Prisons.

20. The Bureau has concluded that EZ Card and Kiosk violated the MTA by engaging in the business of transmitting money from consumers to inmates through its lobby kiosks or website for a fee without first obtaining a license from the Department.

21. EZ Card and Kiosk disagrees with the Bureau's findings and disputes its conclusions, but enters into this Order, without admitting to any wrongdoing, to save the time and resources that ongoing litigation would require.

AUTHORITY

22. The Department has the authority to impose an order against any company that engages in unlicensed money transmitter activity and may issue a fine of "up to two thousand dollars (\$2,000) for each offense." 7 P.S. §§ 6113.1, 6114, 6116; *see also* 1 Pa. Code § 35.20.

RELIEF

23. Fine. Within 30 days of the Effective Date of this Order, EZ Card and Kiosk shall pay the Department a fine in the amount of \$25,000. Payment shall be made by certified check or money order made payable to the "Pennsylvania Department of Banking and Securities" and shall be mailed or delivered, in person, to the Compliance Division, Bureau of Compliance and Licensing located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

24. Corrective Action. Within 30 days of the Effective Date of this Order, EZ Card and Kiosk shall:

- a. submit a money transmitter license application to the Department;
- b. provide an executed contract with a Pennsylvania licensed money transmitter demonstrating that it is an agent of the licensee that complies with Pennsylvania agency law;
- c. provide an executed contract with an FDIC insured bank demonstrating

that it is an agent of the bank that complies with Pennsylvania agency law;

d. provide written acknowledgement that it has ceased engaging in the business of money transmitting in Pennsylvania.

Should EZ Card and Kiosk fail to abide by the corrective action within the required timeframe, the Bureau reserves the right to take enforcement action including the imposition of additional fines as appropriate.

FURTHER PROVISIONS

25. Consent. EZ Card and Kiosk hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MTA and agrees that it understands all of the terms and conditions contained herein. EZ Card and Kiosk, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

26. Publication. The Department will publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking Code. *See* 71 P.S. § 733-302.A(5).

27. Entire Agreement. This Order contains the entire agreement between the Department and EZ Card and Kiosk. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department and EZ Card and Kiosk.

28. Binding Nature. The Department, EZ Card and Kiosk, and all officers, owners, directors, employees, heirs and assigns of EZ Card and Kiosk intend to be and are legally bound by the terms of this Order.

29. Counsel. This Order is entered into by the parties upon full opportunity for legal

advice from legal counsel.

30. Effectiveness. EZ Card and Kiosk hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (“Effective Date”).

31. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against EZ Card and Kiosk in the future regarding all matters not resolved by this Order.

b. EZ Card and Kiosk acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

32. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

33. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

34. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

[Signature page follows]

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Compliance and Licensing and General Payment Systems, Inc., d/b/a EZ Card and Kiosk, intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
BANKING AND SECURITIES,
BUREAU OF COMPLIANCE AND
LICENSING**

**FOR GENERAL PAYMENT SYSTEMS,
INC., d/b/a EZ CARD AND KIOSK**

Ryan Walsh, Chief, Compliance Division
Bureau of Compliance and Licensing
Department of Banking and Securities

(Officer Signature)

Ronald Hodge

Date: October 3, 2013

(Print Officer Name)

CEO

(Title)

Date: 10-1-2013