

FILED

2014 JUL 29 PM 12:49

PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF BANKING AND :  
SECURITIES, BUREAU OF LICENSING :  
AND COMPLIANCE, :  
PETITIONER :

v. :

: Docket No. 14 0020 (BNK-C&D)

BOURNE CAPITAL 2 LTD, :  
D/B/A PAYDAY MOBILITY, :  
RESPONDENT :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Compliance and Licensing, ("Bureau") enters into this Consent Agreement and Order ("Order") with Bourne Capital 2 LTD d/b/a Payday Mobility ("Payday Mobility") to further compliance with the requirements of Pennsylvania law, specifically the Consumer Discount Company Act ("CDCA"), 7 P.S. §§ 6201- 6219, and the Act of January 30, 1974, P.L. 13, No. 6, known as the Loan Interest Protection Law ("LIPL"), 41 P.S. §§ 101-605.

The Parties to the above-captioned matter, jointly and severally, in lieu of litigation, and without admitting wrongdoing, but intending to be legally bound, hereby voluntarily agree to the terms of this Order.

**PARTIES**

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA and LIPL.

2. The Bureau is delegated the responsibility to administer and enforce the CDCA and LIPL on behalf of the Department.

3. The Bureau operates from its offices at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

4. Payday Mobility has a business and registered address of Post Office Box 665, Bridge Chambers, West Quay, Ramsey, Isle of Man IM 994PD, and conducts business from this address.

5. Payday Mobility is registered with the Office of Fair Trading, Isle of Man, as a money lender.

6. Payday Mobility is incorporated under and licensed to make consumer loans pursuant to the laws of the Isle of Man.

7. Payday Mobility is not and has never been licensed by the Department as a consumer discount company.

8. Payday Mobility is not registered with the Pennsylvania Department of State as a foreign business corporation.

#### **FACTUAL ALLEGATIONS**

9. The Bureau alleges that Payday Mobility solicited, advertised, offered and negotiated and arranged loans in amounts up to \$500 to Pennsylvania consumers, through its website without a license as required by the CDCA

10. The Bureau further alleges that Payday Mobility entered into loan transactions with Pennsylvania consumers at interest rates in excess of the 6% interest without a license, or other authority under law.

11. The Bureau alleges that the Department received a total of 4 consumer complaints against Payday Mobility in the year 2013.

12. Payday Mobility voluntarily agrees to this Order to avoid the cost and uncertainty of litigation, but without admitting wrongdoing or liability, and for the purpose of maintaining good will with the Commonwealth.

13. Payday Mobility denies the Department's allegations and contends that it has complied with all applicable laws and regulations, and has engaged in no wrongdoing. Payday Mobility further alleges that its loans are legal and enforceable and are not subject to the CDCA and LIPL.

#### AUTHORITY OF THE DEPARTMENT

14. Section 202 of the LIPL limits interest charged on all loans, not otherwise regulated by state or federal law, to a simple rate of 6% per annum. 41 P.S. § 202.

15. Section 3 of the CDCA requires any principal, employee, agent or broker, in the Commonwealth of Pennsylvania engaged in the business of negotiating or making loans or advances of money on credit, in the amount or value of \$25,000 or less, to have a license. 7 P.S. § 6203; *Cash America Net of Nevada, LLC v. Dep't of Banking*, 8 A.3d 282 (Pa. 2010).

16. Section 11 of the CDCA requires any principal, agents or broker, who advertises or solicits the business of lending money in Pennsylvania to have a license issued by the Department. 7 P.S. § 6211; *Cash America*.

17. Section 13 of the CDCA, limits interest charged on loans of less than \$25,000 to \$9.50 per hundred, plus a service charge of \$1.50 for each \$50.00 up to \$150.00. 7 P.S. § 6213.

18. Section 502 of the LIPL provides borrowers the right to individual cause of action to recover excess interest, and triple damages, from any persons charging more than 6% interest in violation of the LIPL.

19. Section 505(b) of the LIPL provides that any person who violates a provision of the LIPL shall be subject to a fine levied by the department of \$10,000 per offense. 41 P.S. § 505(b).

#### ALLEGED VIOLATIONS

20. The Bureau alleges Payday Mobility violated the CDCA when it engaged in the business of a consumer discount company in Pennsylvania through the acts of soliciting, originating and funding short-term loans in Pennsylvania through the internet without a license as required by the CDCA. 7 P.S. § 6203.

21. The Bureau alleges Payday Mobility violated the LIPL when it engaged in the collection of interest on consumer loans in excess of 6% per annum. 41 P.S. § 202.

22. Payday Mobility denies the allegations and alleges that its loans are legal and that it is not subject to Pennsylvania law, including the CDCA or LIPL. To the contrary, Payday Mobility alleges that it has complied with all applicable law and that the parties to the relevant loan agreements properly consented to the application of the law of the Isle of Man.

#### RELIEF

23. Payment. Payday Mobility shall pay the Department \$40,000 within 30 days of the Effective Date of this Order as defined in paragraph 32 below. This payment will be applied by the Department as a fine. The payment shall be made by certified check or money order made payable to the "Pennsylvania Department of Banking and Securities" and mailed or delivered to the attention of Theresa Jones, Compliance Division, Bureau of Compliance and

Licensing, Department of Banking and Securities, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

24. Corrective Action. From the Effective Date of this Order as defined in paragraph 32 below, Payday Mobility shall do all of the following:

(i) Cease and desist from advertising, soliciting, arranging, negotiating and making loans of \$25,000 or less to Pennsylvania residents in which the interest exceeds 6% per annum, unless licensed by the Department as a consumer discount company;

(ii) Cease and desist from allowing Pennsylvania residents to apply for a short-term loan online in excess of 6% interest, through a website, or by any other means, by eliminating Pennsylvania as a choice in any drop down box or loan application and by specifically stating on any and all websites owned or operated by Payday Mobility the following language: "Loans are not available to Pennsylvania residents," or similar language;

(iii) Cease and desist from attempting to collect, directly or indirectly through third parties such as collection agencies, interest that exceeds 6% per annum for loans of \$25,000 or less made to Pennsylvania residents such that all Pennsylvania loans with an outstanding principle balance are reset to a 6% interest rate. Payday Mobility may collect any other outstanding amount from consumers permitted by Pennsylvania, federal, or any other applicable law, including but not limited to any charges not required to be disclosed as part of a finance charge;

(iv) Cease and desist from transferring, assigning or selling to any persons, companies or entities of any kind whatsoever any loans that it has made to Pennsylvania

residents of \$25,000 or less in which it has charged interest in excess of 6% per annum, nor shall it purchase any loans that meet these parameters; and

(v) Cease and desist from, directly or indirectly through third persons, filing a credit report with any credit reporting agency regarding any Pennsylvania resident to which it has provided a loan of \$25,000 or less for which it has charged interest in excess of 6% per annum, and removing all credit reports previously made.

25. Department Remedies. Should the Department ascertain that Payday Mobility either (i) continued to offer loans of \$25,000 or less to Pennsylvania residents and charge interest in excess of 6% after the effective date of this Order, or (ii) failed to undertake or comply with any of its obligations set forth in this Order, or (iii) failed to pay the amount set forth in Paragraph 23, the Bureau expressly reserves the right to seek enforcement in the Commonwealth Court or otherwise as provided by law.

#### **FURTHER PROVISIONS**

26. Consent. Payday Mobility hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order, and agrees that it understands all of the terms and conditions contained herein. Payday Mobility, by voluntarily entering into this Order, waives any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

27. Publication and Release. The Department will publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking and Securities Code, 71 P.S. § 733-302.A.(5).

28. Consumer Rights. This Order shall not limit or impair consumers' rights under the LIPL. See 41 P.S. §§ 501-507.

29. Entire Agreement. This Order contains the whole agreement between the parties. 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 parties.

30. Binding Nature. The Department and Payday Mobility intend to be and are legally bound by the terms of this Order. This Order shall be enforceable in a court of competent jurisdiction by the Department and Payday Mobility. This Order shall be admissible in court if relevant to the proceedings. This Order shall be binding upon and inure to the benefit of Payday Mobility, its present and future owners, principals, directors, officers, members, partners, managers, agents, successors and assigns.

31. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

32. Effectiveness. Payday Mobility stipulates and agrees that this Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

33. 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 Payday Mobility in the future regarding all matters not resolved by this Order.

(b) Payday Mobility 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.

(c) Except as otherwise provided in this paragraph, once Payday Mobility has fully complied with all of its obligations under this Order, the Department agrees that it

will not bring an enforcement action of any kind against Payday Mobility or against any of its present or future members, principals, officers, managers, agents, employees, successors, or assigns for any conduct arising out of or related to any of Payday Mobility's lending activities with Pennsylvania consumers, including consumers not named in the May 13, 2014 Order in this matter, prior to the Effective Date of this Order, or which is otherwise covered by this Order. The Department also agrees that it will not bring an enforcement action against Payday Mobility for collection activities conducted in compliance with this order.

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

35. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

36. 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.

**WHEREFORE**, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking, Bureau of Compliance and Licensing and Bourne Capital 2 LTD D/B/A Payday Mobility do hereby execute this Consent Agreement and Order.



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

Redacted  
By: \_\_\_\_\_  
Ryan Walsh  
Chief of Compliance

Dated: July 29, 2014

**FOR BOURNE CAPITAL 2 LTD,  
D/B/A PAYDAY MOBILITY:**

By: Redacted \_\_\_\_\_

Title: DIRECTOR

Dated: 25 JULY 2014