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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, COMPLIANCE OFFICE	:	
	:	
v.	:	
	:	
SWANSON SERVICES CORPORATION	:	DOCKET NO. 15 <u>CC27</u> (BNK-CAO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities' ("Department") Compliance Office, evaluated certain business practices of Swanson Services Corporation ("Swanson"), and its officers, employees and directors. Based on the results of its evaluation, it is the Compliance Office's position that Swanson 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 Swanson disputes the Compliance Office's position 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").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MTA.
2. The Compliance Office is primarily responsible for administering and enforcing the MTA for the Department.

3. Swanson is a corporation with its corporate headquarters located at 1133 Pennsylvania Street, Denver CO 80203.

4. Swanson's primary business is to supply food, clothing and other convenience items which are sold to inmates through facility commissaries in correctional facilities throughout the United States, including Pennsylvania, and has been engaged in this business in Pennsylvania since November of 2011.

5. To facilitate its primary business, Swanson also engages in the business of transferring money electronically from friends and family of inmates ("consumers") to correctional facilities that hold money in trust for the inmates.

6. Swanson is not, and has never been, licensed as a money transmitter by the Department.

7. Swanson allows consumers to transfer money to the facilities' inmates trust accounts by using credit and debit cards or cash through its lobby kiosks.

8. In addition, Swanson allows consumers to transfer cash to the facilities' inmate trust accounts through third-party cash agent locations that it has contracted with to collect the cash.

9. Swanson ensures that the money received through the lobby kiosks and third-party cash agent locations is transmitted to the facilities' inmate trust accounts.

10. The consumers pay Swanson a fee for each money transfer initiated by a credit card, debit card or cash transaction.

11. Swanson submitted a completed application for a money transmitter license to the Department on July 8, 2015. As a result of Swanson's disclosures in its license application, the Compliance Office became aware of Swanson's activities in Pennsylvania.

VIOLATION

12. Section 2 of the MTA provides 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 . . . nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under this act.

7 P.S. § 6102.

13. A person includes an “individual or organization...” 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...*” 7 P.S. § 6101 (emphasis added).

15. The Compliance Office has historically interpreted the phrase “method for the payment of money or transmittal of credit” to include wire transfers and electronic payment systems.

16. Swanson is an organization and therefore a person within the meaning of Section 2 of the MTA.

17. Swanson accepts Pennsylvania consumers’ credit card, debit card and cash payments from consumers and transfers the money electronically to facilities’ inmate trust accounts for a fee through its lobby kiosks and third-party cash agents it has contracted with; thus, Swanson engages in the “business of transmitting money by means of a transmittal instrument for a fee or other consideration” within the meaning of Section 2 of the MTA.

18. Although Swanson attempted to address its unlicensed status by contracting with a licensed money transmitter to assist in transmitting money to facilities’ inmate trust accounts, Swanson continued to exercise control over the contractual relationship with the licensee; thus, Swanson does not qualify for the agency exceptions set forth in Sections 2 and 3 of the MTA. 7 P.S. §§ 6102, 6103.

19. It is the Department's position that Swanson violated Section 2 of the MTA by transferring money in the form of credit card, debit card, and cash payments from Pennsylvania consumers to facilities' inmate trust accounts through lobby kiosks and third-party cash agents it contracted with for a fee from November of 2011 to the present without a money transmitter license and without qualifying for an agency exemption to licensure.

AUTHORITY

20. Because it is the Department's position that Swanson has engaged in unlicensed activity in violation of the MTA, the Department has the authority to impose an order against the company and issue a fine of "up to two thousand dollars (\$2,000) for each offense." 7 P.S. §§ 6113.1, 6114, 6116; 1 Pa. Code § 35.20.

RELIEF

21. Fine. Swanson shall pay the Department a fine in the amount of \$36,000 in four equal installments of \$9,000, with the first payment due within 30 days of the effective date of this Order, as defined below. Each subsequent payment shall be due three months after the previous payment until the fine is paid in full. Payment shall be made by certified check or money order made payable to the Department of Banking and Securities, and shall be mailed or delivered in person to the Compliance Office located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

22. Corrective Action. Swanson shall provide assurances to the Department that its system will continue to transmit money accurately to avoid the improper transmission of funds to facilities' inmate trust accounts and, to the extent any transmission issues with the system occur, it will investigate those issue immediately and take timely appropriate action. Finally, should Swanson make any changes to its business plan it must notify the Department's Licensing Office

immediately and provide the new business plan and any information that the Licensing Office may request regarding such change(s).

23. License. Upon the effective date of this Order, as defined below, Swanson's money transmitter license application will be approved by the Licensing Office. Should Swanson, and its subsidiaries and affiliates, fail to comply with any of the terms set forth in the Order, the Department reserves the right to take enforcement action against Swanson or its affiliates and subsidiaries, including suspension, revocation or refusal to renew its money transmitter license.

FURTHER PROVISIONS

24. Consent. Swanson hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Compliance Office's order authority under the MTA and agrees that it understands all of the terms and conditions contained herein. Swanson, 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.

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

26. Entire Agreement. This Order contains the entire agreement between the Department and Swanson. 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 Swanson.

27. Binding Nature. The Department, Swanson, and all affiliates, subsidiaries, officers, owners, directors, employees, heirs and assigns of Swanson, intend to be and are legally bound by the terms of this Order.

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

29. Effectiveness. Swanson hereby stipulates and agrees that the Order shall become effective on the date that the Compliance Office executes the Order.

30. 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 Swanson, its affiliates and subsidiaries, in the future regarding all matters not resolved by this Order.

b. Swanson 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.

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

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

26. 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.

WHEREAS, in consideration of the foregoing, including the recital paragraphs, the Department of Banking and Securities' Compliance Office and Swanson Service Corporation, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF BANKING AND SECURITIES, COMPLIANCE OFFICE

FOR SWANSON SERVICE CORPORATION

Redacted

Redacted

Ryan M. Walsh
Director, Compliance Office

Date: August 21, 2015

(Officer's Signature)

Christopher Alberta
(Print Officer's Name)

CEO / President
(Officer's Title)

Date: 8/12/15