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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. :

DEBTPAY GATEWAY, INC. :

DOCKET No. 150029 (BNK-C&D)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office, evaluated certain business practices of DebtPay Gateway, Inc. ("DPG") and its officers, employees and directors. Based on the results of its evaluation, it is the Department's position that DPG violated the act known as the Money Transmitter Act ("MTA"), 7 P.S. § 6101 *et seq.* DPG agrees to enter into this Consent Agreement and Order ("Order") without admitting to any 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 agrees to the terms of this Order.

**BACKGROUND**

1. The Department of Banking and Securities ("Department") is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the act known as the Money Transmitter Act, 7 P.S. §§ 6101-6018 ("MTA").

2. The Compliance Office has the primary responsibility of administering and enforcing the MTA for the Department.

3. DPG is a corporation located at 120 Birmingham Dr., #120F, Cardiff, CA 92007.

4. The Department became aware of DPG because the company is associated with a debt settlement services company which applied for a license pursuant to the Debt Settlement Services Act, 63 P.S. § 2501, *et seq.*

5. On or around February 26, 2015, the Department's Licensing Office received a letter from an attorney representing DPG requesting confirmation that DPG was not required to obtain a money transmitter license pursuant to an exemption provided by the Pennsylvania Banking Code of 1965, 7 P.S. § 105(a), and on other grounds.

6. DPG provides its services to debt settlement services companies via a servicing agreement, agreeing to provide software for tracking and monitoring custodial accounts on behalf of consumers that purchase a debt settlement company's services.

7. DPG acts as a third party custodian that holds the debt settlement services company's client funds at an insured financial institution for the purpose of paying the debt settlement services company's fees and for making payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction or other alteration of the terms of payment or other terms of a debt.

8. DPG holds the funds until it receives confirmation that a debt has been settled on behalf of the debt settlement services company's client.

9. DPG releases the authorized amount of funds to the debt settlement services company client's creditor as well as the appropriate amount of fees due to the debt settlement services company.

10. On or around March 19, 2015, the Department's legal office responded to the February 26, 2015 letter indicating the Department's position that DPG, a third party payment processor working with debt settlement services companies, must be licensed as a money transmitter.

11. On October 5, 2015, DPG submitted an MTA license application.

12. Based on information provided in the application, DPG began offering its services to Pennsylvania consumers in December of 2009.

13. DPG maintains that the MTA does not apply to its business model or any business model it has used in dealing with Pennsylvania consumers, but in the interest of cooperation, it applied for a money transmitter license in Pennsylvania.

#### Unlicensed Activity

14. The MTA provides that "[n]o 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.

15. 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." 7 P.S. § 6102 (emphasis added).

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

17. Although the business of transmitting is not defined by the MTA, the plain meaning of the word "transmit" is to "send or transfer from one person or place to another." See BLACK'S LAW DICTIONARY, 1499 (6<sup>th</sup> ed. 1990); 1 Pa. C.S. § 1903(a).

18. DPG acting as a third party payment processor takes bank account, ACH or credit card information from consumers to facilitate the movement of funds from the consumer to the debt settlement services company.

19. The Department's position is third party payment processors are not exempt from licensure under the MTA.

20. The Department contends DPG violated the MTA because it transfers money from one person and place to another, therefore it must be licensed as a money transmitter in Pennsylvania in order to provide services to debt settlement services companies.

21. This Order resolves the violations alleged by the Department up until the approval of DPG's license application, which will be processed upon filing of this Order.

#### **RELIEF**

22. Fine. DPG shall pay the Department a fine in the amount of \$52,500, payable in quarterly installments in the amount of \$13,125, with the first payment due within 30 days of the effective date of this Order, as defined below. Payments 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.

23. License. Should DPG, 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 DPG or its affiliates and subsidiaries, including an order to cease and desist or the suspension, revocation or refusal to renew a money transmitter license.

## FURTHER PROVISIONS

24. Consent. DPG hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Compliance Office's order authority made under the MTA and agrees that it understands all of the terms and conditions contained herein. DPG, 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 and Securities Code. *See* 71 P.S. § 733-302.A(5).
26. Entire Agreement. This Order contains the entire agreement between the department and DPG. 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 DPG.
27. Binding Nature. The Department, DPG, and all affiliates, subsidiaries, officers, owners, directors, employees, heirs and assigns of DPG, 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. DPG 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 DPG, its

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

b. DPG 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.

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

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

33. 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 Department of Banking and Securities' Compliance Office, and DebtPay Gateway, Inc., 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 DEBTPAY GATEWAY, INC.

Redacted

Redacted

John Talalai  
Administrator, Compliance Office

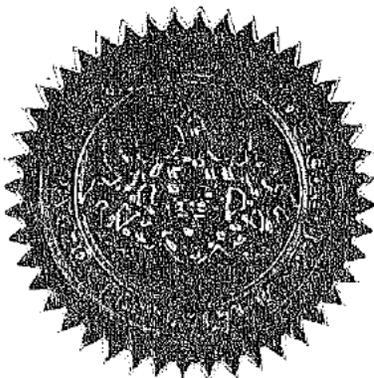
(Officer Signature)

Date: 5-12-2016

Christopher P. Cohen  
(Print Officer Name)

President  
(Title)

5-11-2016  
(Date)



FILED

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

MAY 12 AM 10:57

PA DEPARTMENT OF  
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COMMONWEALTH OF PENNSYLVANIA :  
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PRAECIPE TO AMEND

To Docket Clerk:

1. On May 12, 2016, the Department of Banking and Securities, Compliance Office ("Department") received a signed consent agreement and order ("Order") from DebtPay Gateway, Inc. ("DPG").
2. Prior to signing the Order, DPG informed the Department of a correction in the company address reference in paragraph 3 of the Order.
3. While the change was made, the incorrect version was signed by both parties and not caught until after the filing of the Order.
4. The correct address for DPG is 120 Birmingham Dr., #245, Cardiff, CA 92007.
5. Thus, the Order is amended to include the corrected address.

Respectfully submitted,

Redacted  
Sharon M. Williams, Assistant Counsel  
Department of Banking and Securities