

DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER



JOSE ADAN TREVINO
CHAIRMAN

JOHN R. MORGAN
DEPUTY SECURITIES COMMISSIONER

NICHOLAS C. TAYLOR
MEMBER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

KENNETH W. ANDERSON, JR.
MEMBER

Phone: (512) 305-8300
Facsimile: (512) 305-8310

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.state.tx.us

JACK D. LADD
MEMBER

BRYAN K. BROWN
MEMBER

SSB Docket No. 03-032

IN THE MATTER OF
PAYMENTWORKS, INC., aka PAYMENT WORKS, INC.,
aka PAYMENTWORKS; DAN DIGMAN, SR., aka DAN
DIGMAN; XPRESSPAY ATM, INC., aka XPRESSPAY
ATM; KEY FUNDING SOURCE AND KEITH L. PELKEY

§
§
§ Order No. CDO-1524
§
§

TO: PaymentWorks, Inc. aka Payment Works, Inc.
aka PaymentWorks
1807 West Slaughter Lane, Suite 200-492
Austin, Texas 78748
and
4612 Burleson Road, Unit L
Austin, Texas 78744
and
c/o David Tucker, Registered Agent
4403 Manchaca Road, Suite D
Austin, Texas 78745

XpressPay ATM, Inc. aka XpressPay ATM
12110 Manchaca Road, Suite 103
Austin, Texas 78748

Dan Digman, Sr.
aka Dan Digman
9009 Kimono Ridge Drive
Austin, Texas 78748
and
1500 Geoffs
Austin, Texas 78748

Key Funding Source
6675 W. Hayner Road
Fowlerville, Michigan 48836

Keith L. Pelkey
6675 W. Hayner Road
Fowlerville, Michigan 48836

EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas ("Securities Commissioner") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2003) ("Texas Securities Act").

The Staff of the Enforcement Division ("the Staff") of the Texas State Securities Board ("the Securities Board") has presented evidence sufficient for the Securities Commissioner to find that:

FINDINGS OF FACT

1. PaymentWorks, Inc., aka Payment Works, Inc., aka PaymentWorks (“Respondent PaymentWorks”) is a Texas Domestic Business Corporation that purports to have a business address of 1807 West Slaughter Lane, Suite 200-492, Austin, Texas 78748. The records of the Secretary of the State of Texas also indicate that Respondent PaymentWorks maintains a principal place of business at 4612 Burleson Road, Unit L, Austin, Texas 78744. These records further indicate that the Registered Agent of Respondent PaymentWorks is David Tucker and that he maintains an address of 4403 Manchaca Road, Suite D, Austin, Texas 78745.
2. Dan Digman, Sr., aka Dan Digman (“Respondent Digman”) is a natural person who is identified herein as being the Chairman of the Board of Respondent PaymentWorks and as maintaining an address of 1500 Geoffs, Austin, Texas 78748. The records of the Secretary of the State of Texas indicate that Respondent Digman is also the Vice President of Respondent PaymentWorks and that he maintains an address at 9009 Kimono Ridge Drive, Austin, Texas 78748.
3. XpressPay ATM, Inc., aka XpressPay ATM (“Respondent XpressPay”) purports to be a corporation that is affiliated with Respondent PaymentWorks and Respondent Digman as identified herein and that maintains an address of 12110 Manchaca Road, Suite 103, Austin, Texas 78748. The records of the Secretary of the State of Texas, however, reflect that Respondent XpressPay has neither filed with nor has received authorization from the Secretary of the State of Texas to transact business in Texas as a domestic or foreign corporation, professional corporation, professional association, limited partnership or limited liability company.
4. Key Funding Source (“Respondent Key Funding”) is affiliated with both Respondent PaymentWorks and Respondent XpressPay as described herein. Respondent Key Funding purports to have the last known address of 6675 W. Hayner Road, Fowlerville, Michigan 48836.
5. Keith L. Pelkey (“Respondent Pelkey”) is a natural person who is affiliated with Respondent Key Funding as described herein and who purports to have the same last known address as Respondent Key Funding.
6. The Forbes Magazine issue dated July 7, 2003, carried an advertisement that read in part as follows: ***IRA PLAYING DEAD??? ROLL IT OVER! Amazing 41% Annualized Return! Big Money, Free Report.*** This advertisement directed its audience to contact the toll-free telephone number identified therein for additional information.
7. During or about July, 2003, a Texas resident (the “Offeree”) reviewed the aforementioned advertisement and contacted the toll-free telephone number scheduled therein. The telephone call made by the Offeree was answered by a pre-recorded message that identified Respondent Pelkey and Respondent Key Funding and directed the Offeree to the Internet website accessible at

<http://www.keyfundingsource.com>. The recorded message requested that the Offeree leave a name and telephone number on the voice mail system in order to receive a return telephone call. The Offeree subsequently recorded a message that included the Offeree's name and a Texas telephone number.

8. The Offeree thereafter received a telephone call from Respondent Pelkey at the Texas telephone number provided to the aforementioned voice mail system. During the ensuing conversation, Respondent Pelkey identified himself as a representative of Respondent PaymentWorks and made available the opportunity to invest in a Scrip Dispensing Automated Teller Machine ("ATM") program through Respondent PaymentWorks.

Respondent Pelkey represented that an investment through Respondent PaymentWorks would entail the Offeree's purchase of at least three ATMs for a purchase price of \$2,995.00 per ATM. These ATMs would reportedly be placed and serviced by Respondent PaymentWorks. Respondent Pelkey explained that the Offeree would be entitled to seventy cents for each transaction effectuated through the ATM and that Respondent PaymentWorks would be entitled to thirty-five cents for each transaction. Respondent Pelkey noted that the Offeree would receive all payments on a monthly basis and noted that other investors were realizing returns on such investments that average forty percent of their principal investments.

Respondent Pelkey offered to send sales materials to the Offeree that would identify and describe in detail an investment in the ATM program through Respondent PaymentWorks. The Offeree directed Respondent Pelkey to send the sales materials to a Texas mailing address. Respondent Pelkey thereafter sent or caused to be sent sales materials to the Offeree at this Texas mailing address.

9. Included among the sales materials were business cards, a letter addressed to the Offeree, a bound brochure, an unexecuted contract and other materials relevant to the purchase of an investment in the ATM program. Many of these documents reflected a logo of Respondent XpressPay. This logo contained therein a minute disclaimer that appears to read: *XpressPay ATM is a registered trademark of PaymentWorks, Inc.*

These sales materials are identified and described in greater detail as follows:

- a. Included within the sales materials were three identical business cards that identified Respondent Pelkey as being affiliated with Respondent Key Funding and provided the business addresses referenced herein for both Respondent Pelkey and Respondent Key Funding. These business cards indicated that Respondent Key Funding and Respondent Pelkey are engaged in the business of purchasing and selling "cash flow."
- b. The sales materials included a letter that purported to be authored by Respondent Pelkey and that was embodied on letterhead styled in the name of Respondent Key Funding. This letter referred to the ATM program as the

“Passive Investors’ Program” and stressed that the Offeree would remain completely “passive” in regard thereto should the Offeree ultimately purchase such an investment.

This letter further indicated that an investment in the ATM program would entitle the Offeree to a return of approximately forty-one percent of the principal investment in the form of “passive/residual income.” The letter defined “passive/residual income” to mean that the Offeree would simply “[i]nvest then collect monthly income. Period!”

- c. The sales materials included a one-page document styled *Income Producing Assets ~ A Business Investment* that reflected contact information for both Respondent Key Funding and Respondent Pelkey and further described the ATM program identified herein. This document indicated that an investment of \$2,995.00 would entitle the Offeree to ownership of the applicable ATM and to at least seventy cents per transaction effectuated through the ATM. This document further indicated that Respondent PaymentWorks would receive thirty-five cents per transaction and would be responsible for servicing and maintaining the ATM “for life.”

This document also indicated in italicized typeface that “Rich People Buy Assets - Poor People Buy Liabilities.” This document further indicated in blue typeface that the Offeree would be compensated in the form of “finder fees” for referrals made to Respondent Pelkey.

- d. The sales materials included a brochure that described the investment in the ATM program. This brochure purported to be copyrighted in the name of Respondent PaymentWorks, noted that Respondent XpressPay was a “Texas corporation” and indicated that Respondent XpressPay could be contacted via the Internet at the Internet website accessible at <http://www.xpresspayatm.com> (the “XpressPay Website”). The brochure also indicated that an investment in the ATM program would entitle the Offeree to a “Lifetime Warranty” whereby Respondent XpressPay would guarantee the ATM so long as the Offeree processed through Respondent XpressPay.

Portions of this brochure explained that the ATM program was being made available through Respondent XpressPay, indicated that Respondent XpressPay was also known as “XpressPay ATM, Inc.,” and explained that Respondent XpressPay was “founded under the Laws of The State of Texas in May 2002.” Other portions of this bound brochure, however, indicated that the ATM program was being made available through Respondent PaymentWorks and indicated that Respondent PaymentWorks was also known as “Payment Works, Inc.,” “Payment Works, Inc, Inc.” and “Payment Works Inc ATM, Inc.”

This bound brochure further represented that ATMs located in the fast-food sector have historically averaged between 175 and 225 transactions per month and that, based on such historical figures, an investor could expect to earn a fifty-six percent annual return on his or her principal investment. The bound brochure further indicated that the "smallest annual return" on such investments are currently valued at forty-one percent of the principal investment.

- e. The aforementioned bound brochure also included a four-page section styled *Prospectus for PaymentWorks, Inc.* (the "Prospectus") that identified Respondent Digman as the Chairman of the Board of Respondent PaymentWorks and who maintains an address of 1500 Geoffs, Austin, Texas 78748. The first two sections of the Prospectus identified Respondent PaymentWorks as the "seller" of the ATM investment program. The remaining sections of the Prospectus, however, interchangeably referred to both Respondent PaymentWorks and Respondent XpressPay.
 - f. The sales materials also included an unexecuted form styled *Purchase Agreement* (the "Agreement") that was presented on letterhead styled in the name of Respondent XpressPay. The Agreement was to be completed by the Offeree and acknowledged and accepted by Respondent XpressPay. The Agreement identified Respondent XpressPay as the "seller" of the investment in the ATM program, set forth the terms of the investment and indicated that Respondent XpressPay would assist in relocating those ATMs that averaged fewer than sixty transactions per month over the first one hundred and twenty days of the investment. The Agreement did not, however, mention or reflect Respondent PaymentWorks or any responsibilities attributable thereto.
10. The Offeree thereafter reviewed the XpressPay Website. The XpressPay Website was presented on a background styled in the name of Respondent PaymentWorks and purported to be copyrighted by Respondent PaymentWorks. The XpressPay Website made available an investment in the aforementioned ATM program and included therein a nearly verbatim reproduction of the letter earlier sent to the Offeree by Respondent Key Funding and Respondent Pelkey. The letter on the XpressPay Website, however, purported to be authored not by Respondent Pelkey but rather by Respondent Digman.

The XpressPay Website also included therein a form that was presented on letterhead styled in the name of Respondent PaymentWorks that was substantially similar to the aforementioned Agreement. This form, however, indicated that Respondent PaymentWorks, not Respondent XpressPay, was the "seller" of the investment in the ATM program.

11. The Offeree thereafter reviewed the Internet website accessible at <http://www.paymentworks.com> (the "PaymentWorks Website"). The Offeree noted that the PaymentWorks Website was substantially similar to the XpressPay Website

and contained numerous reproductions of images first observed on the XpressPay Website. The PaymentWorks Website also contained therein a form that was substantially similar to the form contained within the XpressPay Website that again indicated that Respondent PaymentWorks was the "seller" of the ATM investment program.

12. On or about July 29, 2003, Respondent Pelkey contacted the Offeree and again made available the opportunity to invest in the ATM investment program described herein. Respondent Pelkey informed the Offeree that Respondent PaymentWorks and Respondent XpressPay were "the same company." Respondent Pelkey explained that Respondent PaymentWorks has been and currently is using the name of Respondent XpressPay.
13. The ATM investment program identified and described herein has not been registered by qualification, notification or coordination and no permit has been granted for its sale within the State of Texas.
14. Respondent PaymentWorks, Respondent XpressPay, Respondent Digman, Respondent Key Funding and Respondent Pelkey (collectively "Respondents") have not been registered with the Securities Commissioner as securities dealers, agents, investment advisers or investment adviser representatives at any time material hereto and Respondents have not submitted a notice-filing to the Securities Commissioner as investment advisers or investment adviser representatives at any time material hereto.
15. The statement made by Respondent Key Funding and Respondent Pelkey that indicated that the Offeree would be paid "finder fees" for referrals is misleading in light of the fact that neither Respondent Key Funding nor Respondent Pelkey disclosed that the Texas Securities Act would require the Offeree to be registered with the Securities Commissioner as a dealer or an agent in order to offer for sale or sell the ATM investment program in Texas and to receive compensation for such actions unless an exemption applied.
16. The statements made by Respondent XpressPay and Respondent Digman that indicated that Respondent XpressPay was a Texas corporation that was "founded under the Laws of The State of Texas in May 2002" are misleading in light of the fact that Respondent XpressPay has neither filed with nor received authorization from the Secretary of the State of Texas to transact business in Texas as a domestic or foreign corporation, professional corporation, professional association, limited partnership or limited liability company.
17. The statements made by Respondents that refer to Respondent PaymentWorks as the seller of the ATM program and reference the duties and obligations of Respondent PaymentWorks pursuant to the ATM program are misleading in light of the fact that the Agreement to be executed by the investor refers exclusively to Respondent XpressPay as the seller of the ATM program.

CONCLUSIONS OF LAW

1. The ATM investment program described herein is an investment contract and is therefore a "security" as that term is defined in Section 4.A of the Texas Securities Act.
2. Respondents engaged in the offer for sale of the above-described security in Texas as the term "offer for sale" is defined in Section 4.E of the Texas Securities Act.
3. Respondents violated Section 7 of the Texas Securities Act by offering for sale the above-described security in Texas without the security being registered with the Securities Commissioner.
4. Respondents are acting as "dealers" in securities or "agents" of dealers in securities as those terms are defined in Sections 4.C and 4.D of the Texas Securities Act.
5. Respondents violated Section 12 of the Texas Securities Act by offering securities for sale in Texas without being registered pursuant to Section 12 of the Texas Securities Act.
6. Respondent Key Funding and Respondent Pelkey made an offer containing a statement that is materially misleading or otherwise likely to deceive the public by representing that the Offeree would be paid a "finder fee" for locating and referring investors for the ATM investment program and not disclosing that the Texas Securities Act would generally require the Offeree to be registered with the Securities Commissioner as a dealer or an agent in order to offer for sale or sell the ATM investment program and to receive compensation for such actions.
7. Respondent XpressPay and Respondent Digman made an offer containing a statement that is materially misleading or otherwise likely to deceive the public by representing that Respondent XpressPay was a Texas corporation that was "founded under the Laws of The State of Texas in May 2002" when Respondent XpressPay has neither filed with nor has received authorization from the Secretary of the State of Texas to transact business in Texas as a domestic or foreign corporation, professional corporation, professional association, limited partnership or limited liability company.
8. Respondents made an offer containing a statement that is materially misleading or otherwise likely to deceive the public by repeatedly referring to Respondent PaymentWorks as the seller of the ATM program and repeatedly referencing the duties and obligations of Respondent PaymentWorks as related to the ATM program when the Agreement to be executed by the investor refers exclusively to Respondent XpressPay as the seller of the ATM program.
9. Respondents' conduct, acts and practices threaten immediate and irreparable harm to the public.

10. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Texas Securities Act.

ORDER

1. It is therefore ORDERED that Respondents immediately CEASE AND DESIST from acting as securities dealers or agents in Texas until Respondents are registered with the Securities Commissioner or an available exemption is utilized.
2. It is further ORDERED that Respondents immediately CEASE AND DESIST from offering securities in Texas until the securities have been registered with the Securities Commissioner or an available exemption is utilized.
3. It is further ORDERED that Respondents immediately CEASE AND DESIST from offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

NOTICE

Pursuant to Section 23-2 of the Texas Securities Act, you may request a hearing before the 31st day after the date you were served with this Order. The request for a hearing must be in writing, directed to the Securities Commissioner, stating the grounds for the request to set aside and modify the Order. Failure to request a hearing will result in the Order becoming final and non-appealable.

You are advised under Section 29.D of the Texas Securities Act that any knowing violation of an order issued by the Securities Commissioner under the authority of Section 23-2 of the Texas Securities Act is a criminal offense punishable by a fine of not more than \$5,000, or imprisonment in the penitentiary for not more than two years, or by both fine and imprisonment.

SIGNED AND ENTERED by the Securities Commissioner this 4th day of August, 2003.


DENISE VOIGT CRAWFORD
Securities Commissioner