

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

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| In the Matter of the Kansas Non-Resident ) |                  |
| Insurance Agent's License of )             |                  |
| <b>JOSHUA DAVID MELLBERG, LLC</b> )        | Docket No. 82802 |
| d/b/a JD Mellberg Financial )              |                  |
| License # 562435666-000 )                  |                  |

**CONSENT AGREEMENT AND ORDER**  
(Pursuant to K.S.A. 40-4909, K.S.A. 77-501, *et seq.*)

Pursuant to the authority granted to the Commissioner of Insurance ("Commissioner") by K.S.A. 40-103 and in accordance with K.S.A. 40-4901, *et seq.*, and K.S.A. 77-501 *et seq.*, the Commissioner hereby accepts the stipulations of the parties, and imposes sanctions against the license of **JOSHUA DAVID MELLBERG, LLC d/b/a JD Mellberg Financial** ("Respondent"). This Consent Agreement shall become effective as a Final Order, without further notice when signed by the Commissioner or her designee and filed of record with the Kansas Insurance Department ("Department").

**FINDINGS OF FACT**

1. Respondent, Joshua David Mellberg, LLC ("JD Mellberg"), is licensed as a nonresident agent to transact in the business of insurance in the State of Kansas, and has been so licensed according to Department records since February 25, 2014.
2. Respondent's last known address of record is 3067 W. Ina Rd., Suite 105, Tucson, AZ 58741-2107.
3. On or around December 4, 2019, a Kansas consumer "Rick" received a phone call with a voice message from telephone number 877-801-9856.
4. The phone number, 877-901-9856, is a number associated with the Respondents.

5. On the voice message, an individual who identifies herself as Ashley Shipman, states the following:

“Hi, this message is for Rick. This is Ashley Shipman calling with Leslie Davis’ office. It looks like you met with her back in 2016, she’s a financial advisor. Um, we just, launched some new products that are pretty amazing, uh, so she wanted me to reach out to you, tell you a little more about it, and see if it is something you’d be interested in, and uh, meeting again to discuss. A guaranteed income for life that continues to accumulate, um. If you give me a call back here, I can probably tell you in a couple of minutes if this is going to be relevant to you or not. And you can reach me, Ashley Shipman, at 877-801-9856.

6. At all times relevant hereto, Ashley Shipman was not employed by Kansas resident agent, Leslie Davis, however, Respondent provided evidence indicating that Ms. Davis was a former Independent Contractor affiliated with Respondent and that Ms. Davis and Respondent jointly represented the individual identified as “Rick” above in the purchase of one or more annuity products.

7. At all times relevant hereto, Ashley Shipman was an employee of Respondent or was acting on behalf of Respondent.

8. The Department provided Respondent the voice message left by Ashley Shipman.

9. The Department issued a Summary Order proposing to revoke Respondent’s license, and Respondent timely requested a hearing.

10. The parties mutually desire to resolve any potential action against Respondent’s Kansas nonresident insurance agent license by agreement. In resolving this matter by a Consent Agreement and Final Order, Respondent stipulates that evidence exists to support the Commissioner’s findings of fact and conclusions of law.

11. Respondent acknowledges the Commissioner has sufficient evidence to show that Respondent did not adequately train or supervise Ms. Shipman and that Ms. Shipman’s statement

suggesting that she was currently affiliated with Ms. Davis office could lead to coercive or dishonest practice or demonstrate untrustworthiness to Kansas consumers.

12. Respondent further acknowledges the appropriate mechanisms were not in place to prevent employees of JD Mellberg from dishonest or coercive calls to Kansas consumers.

13. Respondent is represented by counsel and acknowledges that his right to a hearing on the facts and disposition has been explained to him and he understands his rights.

14. In lieu of a hearing, Respondent agrees to accept the sanctions imposed by this Consent Agreement and Final Order to resolve the Commissioner's allegations that his agency have used coercive or dishonest practices and demonstrated untrustworthiness in the conduct of business.

15. Respondent waives their rights to a hearing and any available administrative judicial review of the Commissioner's order.

#### **APPLICABLE LAW**

K.S.A. 40-4909(a) provides, in relevant part:

"The commissioner may deny, suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the applicant or license holder has:

(8) Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere."

K.S.A. 40-4909(b) provides, in relevant part:

"In addition, the commissioner may suspend, revoke or refuse renewal of any license issued under this act if the commissioner finds that the interests of the insurer or the insurable interests of the public are not properly served under such license."

K.S.A. 40-4909(h) provides, in relevant part:

"In lieu of taking any action under subsection (a), the commissioner may:

- (1) Censure the person; or
- (2) Issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed \$2,500 for the same violation occurring within any six

consecutive calendar months from the date of the original violation unless such person knew or should have known that the violative act could give rise to disciplinary action under subsection (a). If such person knew or reasonably should have known the violative act could give rise to any disciplinary proceeding authorized by subsection (a), the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed \$5,000 for the same violation occurring within any six consecutive calendar months from the date of the imposition of the original administrative penalty.”

### **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over **JOSHUA DAVID MELLBERG, LLC** as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
2. The Commissioner finds that Respondent did not appropriately train or supervise Ms. Shipman which has the potential to lead to coercive or dishonest practices and demonstrate untrustworthiness in the conduct of business.
3. The Commissioner is charged with safeguarding the security and integrity of the insurance business and protecting consumers by licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the State of Kansas only if their conduct indicates they are both qualified and trustworthy.
4. The Commissioner concludes that the proposed remedy of a monetary penalty and the Respondent’s submission of a plan to easily allow the Department to audit phone calls made by Respondent to Kansas residents in lieu of action pursuant to K.S.A. 40-4909(a) would adequately protect the interests of insurers and the insurable interests of the public in Kansas.

### **STIPULATION**

The undersigned stipulates and agrees to the above findings, facts, and conclusions of law and waives their rights to an administrative hearing and judicial review of the Commissioner’s Order.

Prepared by:

Approved by:

*Nicole K. Turner*

Nicole K. Turner, #28442

Attorney

Justin L. McFarland, #24247

General Counsel

*Dan Morgan*

Dan Morgan,

General Counsel

Chief Compliance Officer

JD Mellberg Financial

**ORDER**

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:**

1. Respondent shall pay a monetary penalty of \$3,000 for using coercive or dishonest practices and demonstrating untrustworthiness in the conduct of business.
2. The penalty shall be paid in full by September 17, 2020. Failure to pay shall void this Consent Agreement and Respondent will be ordered to show cause as to why the license should not be revoked.
3. Respondent shall retain phone calls made to Kansas residents indefinitely and make such call recordings available to the Department upon request.
4. This Order shall take effect when signed by all parties and the Commissioner or the Commissioner's designee and filed of record with the Kansas Insurance Department.
5. Licensee shall disclose the existence of this order on any company or licensing authority application as a disciplinary action involving the license.

**IT IS SO ORDERED THIS 17<sup>th</sup> DAY OF SEPTEMBER, 2020, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



Vicki Schmidt  
Commissioner of Insurance

BY:

*Justin L. McFarland*

Justin L. McFarland  
General Counsel

**NOTICE REGARDING JUDICIAL REVIEW**

In the event Respondent files a Petition for Judicial Review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

Justin McFarland, General Counsel  
Kansas Insurance Department  
1300 SW Arrowhead Road  
Topeka, Kansas 66604

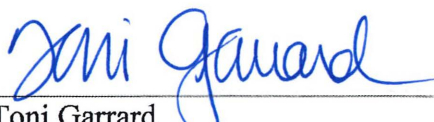
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served the above and foregoing Consent Agreement and Order on this 24th day of June, 2020, by causing the same to be deposited in the United States Mail, first class postage prepaid, addressed to the following:

Joshua David Mellberg, LLC  
3067 W. Ina Rd., Suite 105  
Tucson, AZ 85741  
*Respondent*

Dan Morgan  
General Counsel  
Chief Compliance Officer  
JD Mellberg Financial  
3067 W. Ina Rd., Suite 105  
Tucson, AZ 85741

And via email to:  
[dmorgan@jdmellberg.com](mailto:dmorgan@jdmellberg.com)  
*Counsel for the Respondent*

  
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Toni Garrard  
Senior Administrative Specialist