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COMMISSIONERS OFFICE

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2022-AH-0005

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

VS.

AGREED ORDER

J.D.T., INC. d/b/a INVEST, INC.
and JOHN D. THOMPSON

RESPONDENTS

STATEMENT OF FACTS

1. The Kentucky Department of Financial Institutions (hereinafter, the "Department") is responsible for administering the provisions of Kentucky Revised Statutes ("KRS") Chapter 292, the Securities Act of Kentucky, as well as any applicable rules, regulations, and orders enacted pursuant to the Code.

2. Respondent J.D.T., Inc. d/b/a Invest, Inc. (CRD# 146357) (hereinafter "Invest") is a corporation organized under the laws of the Commonwealth of Kentucky. Its principal address is 444 Lewis Hargett Cir., Ste. 125, Lexington, KY 40503. Invest is a state-registered investment adviser.

3. Respondent John D. Thompson (CRD# 2584356) (hereinafter "Thompson") is president and a registered investment adviser representative of Invest.

4. On May 12 – 13, 2020, the Division of Securities Compliance Branch conducted a routine Investment Adviser examination of Invest. The Department learned the information that follows during the course of, and in the follow-up to, this examination.

5. The Department discovered that Invest failed to obtain properly executed client agreements for multiple clients. This was a repeat violation cited in prior compliance exams.

6. The Department also discovered that Thompson failed to disclose to multiple clients, in writing - while entering into, extending, or renewing an advisory contract - the advisory fee and the formula for computing this fee. This was also a repeat violation cited in prior compliance exams.

7. In addition, the Department discovered that Invest failed to update or complete suitability information for multiple clients, and that Thompson failed to have reasonable grounds to believe that the recommendation of leveraged exchange-traded funds ("ETFs") to multiple clients was suitable due to outdated or incomplete suitability information. Furthermore, Thompson purchased leveraged ETF positions in several client accounts that were held for two to five years or more, and he did not engage in any formal training involving leveraged ETF products to support these investment recommendations or investment strategies.

8. The Department also discovered that Invest failed to provide written disclosures in its Firm Brochure relating to investment in leveraged ETFs for clients or the risks associated with these investments.

STATUTORY AUTHORITY

9. 808 KAR 10:450, Section 2(1) and 808 KAR 10: 450, Section 2 (18)(c) state "[a] person who is an investment adviser or an investment adviser representative shall be a fiduciary and shall have a duty to act primarily for the benefit of its clients. An investment adviser or investment adviser representative shall not engage, either directly or indirectly, in unethical or dishonest practices. The following acts and practices shall be considered either a breach of fiduciary duty or a dishonest and unethical practice. Violations may result in a fine, suspension, or revocation in proportion to the seriousness of the offense:

(1) Recommending to a client to whom investment advisory, management, or consulting services are provided the purchase, sale, or exchange of any security without

reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

...

(18) Entering into, extending, or renewing an advisory contract unless the contract is in writing and discloses the following:..

(c) The advisory fee and the formula for computing the fee;

10. KRS292.320 (1)(b) states:

(1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:...

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

VIOLATIONS

11. Respondent Invest violated 808 KAR 10:450, Section 2 (18)(c) by failing to obtain properly executed client agreements for multiple clients.

12. Respondent Thompson violated KAR 10: 450, Section 2 (18)(c) by failing to disclose in writing to multiple clients - while entering into, extending, or renewing an advisory contract - the advisory fee and the formula for computing this fee.

13. Respondent Invest violated 808 KAR 10:450 Section 2(1) by failing to update or complete suitability information for multiple clients.

14. Respondent Thompson violated of 808 KAR 10:450 Section 2(1) by failing to have reasonable grounds to believe that the recommendation of leveraged ETFs to multiple clients was suitable, due to outdated or incomplete suitability information as to these clients.

15. Respondent Invest violated KRS 292.320(1)(b) by failing to provide written disclosures detailing that it invested in leveraged ETFs for clients, or the risks associated with these investments.

AGREEMENT AND ORDER

16. To resolve this matter without litigation or other adversarial proceedings, the Department and Respondents agree to compromise and settle all claims arising from the above referenced factual background in accordance with the terms set forth herein


17. In the interest of economically and efficiently resolving the violations described herein, it is hereby AGREED and ORDERED:

- i. Respondents agree to pay a civil fine in the amount of three thousand two hundred and fifty dollars (\$3,250) for the violations described herein, which shall be due and payable within thirty (30) days of the entry of this Order;
- ii. Respondents agree they shall be jointly and severable liable for the above noted civil penalty.
- iii. All payments under this Order shall be in the form of an ACH payment made via secure website, pursuant to instructions provided to Respondents, or by a certified check or money order made payable to "Kentucky State Treasurer" and mailed to the Department of Financial Institutions, Securities Division, 2022-AH-0005, 500 Mero Steet, Frankfort, Kentucky 40601;

- iv. Respondents shall cease and desist from any future violations of the Securities Act of Kentucky;
- v. Respondents waive the right to demand a hearing at which they would be entitled to legal representation, to confront and cross-examine witnesses, and to present evidence on their behalf, or to otherwise appeal or set aside this Agreed Order;
- vi. Respondents consent to and acknowledge the jurisdiction of the Department over this matter and that this Agreed Order is a matter of public record and may be disseminated as such;
- vii. In consideration of execution of this Agreed Order, Respondents for themselves, and for their successors and assigns, hereby release and forever discharge the Commonwealth of Kentucky, the Department, Office of Legal Services, and each of their members, agents, and employees in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondents ever had, now have, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration;
- viii. By signing below, the parties acknowledge they have read the foregoing Agreed Order, and fully understand its contents, and that they are authorized to enter into and execute this Agreed Order and legally bind their respective parties; and

ix. This Agreed Order shall constitute the Final Order in this matter.

IT IS SO ORDERED on this the 11th day of July, 2022.



CHARLES A. VICE Justin M. Burse, Deputy Commissioner
COMMISSIONER on behalf of Charles A. Vice

Consented to:

On behalf of the Department of Financial Institutions,

This 11th day of July, 2022.

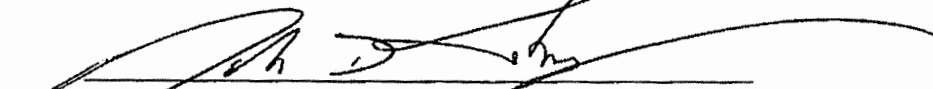
Marni Rock Gibson

Director
Division of Securities
Department of Financial Institutions

AND

On behalf of himself and J.D.T., Inc.

This 22 day of June, 2022



John D. Thompson

ACKNOWLEDGEMENT

COMMONWEALTH OF KENTUCKY

COUNTY OF Fayette

On this the 22 day of June, 2022, before me

Katie Puggles, John D. Thompson personally appeared and acknowledged

himself to be the Respondent named herein, and acknowledged that he entered into and executed the foregoing instrument for the purposes therein contained.

My Commission Expires: 1/30/25

KY NP 22066

Katie Puggles

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Agreed Order** was sent on this the 12 day of July, 2022, by certified mail, return receipt requested, to:

John D. Thompson
444 Lewis Hargett Cir., Ste. 125
Lexington, KY 40503

And by Hand-Delivery to:

Kathryn Adams-Cornett
500 Mero Street, 2SW19
Frankfort, KY 40601
Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Allison Reed, by Victoria Word

Title: Executive Staff Advisor