



- F. Offering to Kansas residents a plan, contract, trust, annuity or policy or coverage for any other form of insurance without submitting to examination by the Insurance Commissioner to determine the organization and solvency of the person or the entity offering such insurance, and determine whether or not such person or entity complies with all applicable provisions of the Kansas Insurance Code.

**Findings of Fact**

1. National Foundation of America (“NOFA”) is a registered non-profit corporation in Tennessee with a last known mailing address of 1308 Buckingham Circle, Franklin, TN 37064.
2. NFOA is not a 501(c)(3) organization.
3. NFOA has not been granted a certificate of authority to write insurance business in the state of Kansas.
4. NFOA is not and has not been registered as a broker-dealer or investment company in the state of Kansas.
5. NFOA sells charitable annuities, charitable “installment plans,” (term certain annuities) testamentary plans, family legacy accounts and charitable remainder trusts.
6. Richard K. Oliver and Susan L. Oliver are officers of NFOA.
7. Richard K. Oliver (“Oliver”) is an individual who serves as President of NFOA, with a last known mailing address of 1308 Buckingham Circle, Franklin, TN 37064.
8. Susan L. Oliver (“Oliver”) is an individual who serves as Vice President of NFOA, with a last known mailing address of 1308 Buckingham Circle, Franklin, TN 37064.

9. NFOA has sold insurance through producer agent Tom Baconrind (“Baconrind”) of El Dorado, Kansas 67042-4100 who is a Kansas licensed insurance agent.  
*Agent ID No. 931045.*
10. NFOA has sold insurance through producer agent Mr. Jones Edwin, of Hiawatha, Kansas 66434 who is an insurance agent licensed in the state of Kansas. *Agent ID No. 929263.*
11. Respondents are not licensed to transact insurance business in the State of Kansas with the Kansas Insurance Department.
12. On or about June 1, 2007, the Kansas Insurance Department began receiving complaints from Kansas residents regarding NFOA.
13. On or about June 11, 2007, the Tennessee Department of Commerce and Insurance Commissioner Leslie Newman were appointed Rehabilitator for NFOA by the Davidson County Chancery Court of Tennessee and have ceased all of NFOA’s assets.
14. Kansas residents have purchased over \$300,000.00 worth of products from NFOA.
15. NFOA has accepted unprocessed applications from Kansas residents.
16. Since January 2006, NFOA and Respondents have issued “charitable installment purchase” (term certain annuities) to Kansas residents.
17. Between January 2006 and June 2007, Respondents solicited licensed insurance agents to sell tax-deductible annuities.
18. Between January 2006 and June 2007, Respondents sold “Installments Purchase Plans” (term certain annuities) to Kansas residents.

19. Between January 2006 and June 2007, consumers were told by Respondents that they would receive approximately 6% return on investments.
20. Between January 2006 and June 2007, consumers were told by Respondents they would receive a charitable tax deduction.
21. Respondents told prospective agents and purchasers that the products they were selling were being legally offered in Kansas by a charitable organization granted an exemption under Section 501(c)(3) of the Internal Revenue Code.

### **Conclusions of Law**

1. K.S.A 40-112 states, in pertinent part:

[T]he commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable or scientific institution conducting a charitable gift annuity business institution conducting a charitable gift

2. K.S.A. 40-2402(a) provides, in pertinent part:

“Person means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s insurer, fraternal benefit society and any other legal entity engaged in the business of insurance.”

3. K.S.A. 40-2403 provides:

“No person shall engage in this state in any trade practice which is defined in this state as, or determined pursuant to K.S.A. 40-2406 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.”

4. K.S.A. 2006 Supp. 40-2404 provides:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (2) “Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement,

announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.”

5. K.S.A. 40-2406 provides:

- (a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in an unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 2006 Supp. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.
- (b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, “costs” shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become part of the hearing record and the expense of making a record of the hearing.

6. K.S.A. 40-2407 provides, in pertinent part:

- (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:
  - (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known such person was in violation of this act, in

which case the penalty shall be not more than \$5,000 for each and every act or violation, but not to exceed an aggregate of \$50,000 in any six-month period.

7. K.S.A 40-4201 provides, in pertinent part:

an act is committed in this state if it is committed in whole or in part, in the state of Kansas, or affects persons or property within the state and relates to or involves an insurance contract.

Based upon the information enumerated in the Findings of Fact above, it appears that National Foundation of America has engaged in the business of insurance in the State of Kansas without a license by soliciting insurance business through Kansas insurance agents in violation of K.S.A. 40-4901; that National Foundation of America sold annuities in Kansas as a result of deceptive acts or practices in violation of K.S.A. 40-2403; and that National Foundation of America printed and presented misleading materials to Kansas insurance agents and residents in violation of K.S.A. 2006 Supp. 40-2404(a)(1) and (2);

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

**THAT:**

1. The National Foundation of America, the individuals named above and their officers, directors, trustees, agents, employees, and affiliates (“Respondents”) immediately cease and desist from the sale, solicitation or negotiation and/or receiving compensation deriving from the sale, solicitation or negotiation of insurance in the State of Kansas.
2. This Cease and Desist Order shall continue in force until further Order of the Commissioner of Insurance.

3. If this Cease and Desist Order is violated, the Commissioner may, at her discretion, subject National Foundation of America, the individuals named above and their officers, directors, trustees, agents, employees, and affiliates to the provisions of K.S.A. 40-2411.
4. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

**Notice of Right to Hearing or Appeal**

You are entitled to a hearing pursuant to K.S.A. § 77-537, the Kansas Administrative Procedure Act. If you desire a hearing, you must file a written request for a hearing with:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

This request must be filed within fifteen (15) days from the date of service of this Order. If you request a hearing, the Kansas Insurance Department will notify you of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of same.

If a hearing is not requested in the time and manner stated above, this Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. § 77-613. In the event that you file 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:

John W. Campbell, General Counsel  
Kansas Insurance Department  
420 S.W. 9th Street  
Topeka, Kansas 66612.

**IT IS SO ORDERED THIS 3rd DAY OF JULY, 2007, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, and STATE OF KANSAS.**



/s/ Sandy Praeger  
Sandy Praeger  
Commissioner of Insurance

BY:

/s/ John W. Campbell  
John W. Campbell  
General Counsel

Submitted by:

/s/ Eliehue Brunson  
Eliehue Brunson  
Attorney for the Petitioner  
Kansas Insurance Department

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the above and foregoing Summary Order was served by placing the same in the United States Mail, first class postage prepared, on this 3rd day of July, 2007 addressed to the following:

Richard K. Olive  
National Foundation of America  
1308 Buckingham Circle  
Franklin, Tennessee 37064

/s/ Eliehue Brunson  
Eliehue Brunson  
Staff Attorney

Susan L. Olive  
National Foundation of America  
1308 Buckingham Circle  
Franklin, Tennessee 37064