

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Berthel, Fisher & )  
Company Financial Services, Inc., )  
Respondent )

**CONSENT ORDER**

.....  
The North Dakota Securities Commissioner has advised the respondent, Berthel, Fisher & Company Financial Services, Inc., that the Commissioner is prepared to commence formal action pursuant to North Dakota Century Code Chapter 10-04 and has determined as follows:

1. Respondent is a securities dealer headquartered in Marion, Iowa. For all times relevant to this matter, respondent has been registered as a securities dealer in North Dakota.
2. From March of 1998 to February of 2000, respondent was associated with Thomas V. Kozlowski (CRD #1842334), who was registered as an agent in North Dakota, and had passed the series 6 and the series 63 examinations. Kozlowski has never passed the series 7 examination, and for all times relevant to this matter, was qualified to conduct only those transactions in securities covered by the series 6 examination.
3. During the year 1999, some transactions in stocks and real estate investment trusts were conducted in Mr. Kozlowski's clients' accounts. Ryan Keel, a series seven qualified agent properly registered in North Dakota, executed many of these transactions. Respondent's system erroneously allowed Kozlowski to receive commissions based on these transactions.
4. Additionally, with regard to one transaction in Dakota REIT, a real estate investment trust, Kozlowski solicited the transaction, acted as registered representative in executing this transaction through a subscription agreement, and received commissions based on the transaction. Additionally, Kozlowski executed the transaction on behalf of a Minnesota resident while Dakota Reit was not a registered security in Minnesota, and indicated that the clients' address was Kozlowski's own office address, in an apparent attempt to avoid the Minnesota registration issue.
5. Respondent's supervisory system did not prevent these solicitations by Kozlowski, or the payment of these commissions to Kozlowski.
6. Pursuant to Rule 2420 of the NASD Rules of Conduct, a dealer cannot share commissions with unregistered persons. Pursuant to section 73-02-09-03 N.D.A.C., it is an unethical or deceptive practice to engage in any violations of the NASD Rules of Conduct.

7. Pursuant to section 10-04-11 N.D.C.C., it is sufficient grounds for the suspension or revocation of a dealer for failing to properly supervise its agents.

8. Pursuant to section 10-04-16 N.D.C.C., when it shall appear to the Commissioner that any person has engaged in, or is engaging in, or is about to engage in any act or practice which is declared illegal in this chapter, the Commissioner may issue any order and collect civil penalties against any person found in an administrative action to have violated any provision of the chapter in an amount not to exceed \$10,000 for each violation.

9. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against respondent pursuant to section 10-04-16 N.D.C.C.

10. Respondent acknowledges its right to a hearing on this matter and waives this right to a hearing and to present arguments to the Commissioner.

11. Respondent agrees to resolve this matter with the Securities Commissioner by this Consent Order, without admitting or denying the facts described herein.

12. The following Order is necessary and appropriate in the public interest.

**NOW, THEREFORE, IT IS ORDERED, THAT:**

1. Respondent shall pay a civil penalty of \$12,303.27, which includes a \$10,000 penalty based on the violations described above plus a disgorgement of \$2,303.27, which amounts to Respondent's portion of the commissions generated on the above-referenced transactions, as itemized in Attachment A, attached hereto and incorporated herein by reference. Such payment shall be submitted upon execution of this Consent Order and shall be payable to the order of the North Dakota Securities Department.

2. Respondent shall reevaluate its supervisory procedures to ensure that commissions are no longer paid to persons who are not qualified to receive such commissions.

3. This Order shall be effective upon signature of the Commissioner.

Signed and Sealed this 12<sup>th</sup> day of November, 2003.



  
Karen J. Tyler, Securities Commissioner  
North Dakota Securities Department  
State Capitol-5th Floor  
600 East Boulevard Ave.  
Bismarck, ND 58505-0510  
(701) 328-2910

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Berthel Fisher )  
& Company Financial Services, Inc., )  
Respondent )

**CONSENT TO ENTRY  
OF ORDER**

.....  
The undersigned, on behalf of the respondent, states that he has read the foregoing Consent Order and that he knows and fully understand its contents and effects. He further states that he is executing this Consent to Entry of Order on behalf of the respondent, being duly authorized to do so. He acknowledges that respondent has waived its right to a hearing with respect to this matter, and that Respondent consents to entry of the Consent Order by the Securities Commissioner.

It is further expressly understood that the Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

Dated this 24th day of July, 2003.

Berthel, Fisher & Company Financial  
Services, Inc.  
701 Tama Street, Bldg. B  
PO Box 609  
Marion, IA 52302-0609

By: Dwight E. Wheelan

Print Name: Dwight E. Wheelan

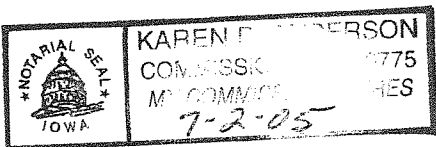
Its: President

Subscribed and Sworn before me this 24 day of July, 2003.

Karen E. Anderson  
Notary Public

State: Iowa County: Linn  
My Commission Expires: 7/2/05

(Notary Seal)



ATTACHMENT A  
Berthal Fischer Commissions

Client	Date	Investment	Total Invested	Total Commission	Kozloski	Keel Override	Retained by Berthel	
Johnson	5/4/1999	IRET	\$37,562.50	\$789.92	\$611.94	\$38.25	\$114.74	
	5/5/1999	IRET	\$37,375.00	\$560.63	\$428.50	\$26.78	\$80.34	
	5/6/1999	IRET	\$37,781.25	\$566.72	\$433.38	\$27.09	\$81.26	
	5/7/1999	IRET	\$37,668.75	\$565.03	\$432.02	\$27.00	\$81.00	
	5/10/1999	IRET	\$37,343.75	\$560.16	\$428.13	\$26.76	\$80.27	
	5/11/1999	IRET	\$37,500.00	\$562.50	\$430.00	\$26.88	\$80.63	
	5/11/1999	IRET	\$37,687.50	\$565.31	\$432.25	\$27.02	\$81.05	
	5/12/1999	IRET	\$37,187.50	\$557.81	\$426.25	\$26.64	\$79.92	
	5/13/1999	IRET	\$37,443.50	\$561.65	\$429.32	\$26.83	\$80.50	
	5/14/1999	IRET	\$33,468.75	\$514.69	\$391.75	\$24.48	\$73.45	
	5/14/1999	IRET	\$3,750.00	\$57.19	\$25.75	\$1.61	\$4.83	
	5/14/1999	IRET	\$37,500.00	\$562.50	\$430.00	\$26.88	\$80.63	
	Johnson	1/28/2000	Dakota REIT	\$100,000.00	\$8,000.00	\$6,400.00	\$400.00	\$1,200.00
	Ackerman	6/22/1999	IRET	\$15,250.00	\$152.50	\$102.00	\$6.38	\$19.13
6/23/1999		IRET	\$15,187.50	\$151.88	\$101.50	\$6.34	\$19.03	
6/24/1999		IRET	\$37,812.50	\$375.00	\$280.00	\$17.50	\$52.50	
6/25/1999		IRET	\$36,867.18	\$368.67	\$274.94	\$17.18	\$51.55	
Meschke	6/9/1999	IRET	\$19,720.00	\$246.50	\$177.20	\$11.08	\$33.23	
	6/9/1999	IRET	\$4,920.00	\$61.50	\$29.20	\$1.83	\$5.48	
	1/24/2000	WSI Int. Mktg.	\$486.00	\$50.00	\$20.00	\$1.25	\$3.75	
Totals			\$15,830.16	\$12,284.13	\$767.76	\$2,303.27		