

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Berthel, Fisher & )  
Company Financial Services, Inc., )  
and Lawrence W. Warren, )  
)  
Respondents )

**CONSENT ORDER**

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The North Dakota Securities Commissioner has advised the respondents, Berthel, Fisher & Company Financial Services, Inc. (Berthel), and Lawrence W. Warren, 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, Berthel, is a dealer headquartered in Cedar Rapids, Iowa. For all times relevant to this matter, Berthel has been registered as a dealer in North Dakota.
2. Respondent, Warren, is an agent associated with Berthel. Additionally, Warren is, and for all times relevant to this matter has been, the supervisor of Berthel's offices located in Bismarck, North Dakota. For all times relevant to this matter, Warren has been registered as an agent in North Dakota.
3. Respondents, Berthel and Warren, failed to supervise their agents by violating Berthel's own supervisory procedures in connection with the branch office located at 931 South Washington Street in Bismarck, North Dakota. Those failures are discussed in detail below:
  - a. Berthel and Warren failed to maintain current printed copies of Berthel's supervisory and compliance manuals. Though Berthel's manuals are available electronically on-line, the branch office was relying upon the printed copies of the manuals, which were out of date. Berthel did not detect this failure in its internal exams of the office.
  - b. Berthel and Warren failed to maintain a proper correspondence file, monitor incoming mail in any way, create, maintain and log incoming and outgoing correspondence, supervise correspondence or review any such correspondence. These failures were not corrected when revealed in an internal audit, though Warren had informed Berthel that some of these failures had been corrected.
  - c. Berthel and Warren failed to maintain a proper advertising file, as some advertisements in the advertising file contained no evidence of supervisory approval. Additionally, one approved piece of

advertisement contained no indication that securities were being offered through Berthel.

- d. Berthel and Warren failed to properly approve multiple new account client suitability forms, as used to purchase variable annuity products, and failed to ensure that those forms were always complete.
- e. With respect to variable annuities, Berthel has failed to review allocations of client funds to determine whether the allocations of those investments are suitable for the investors.
- f. Warren failed to acknowledge any supervisory responsibility, despite his consent to such responsibility through a contract with Berthel, and his receipt of override commissions based on the sales activities of agents in the Bismarck branch offices. Warren stated that he spends no time on supervision of the activities in the offices under his supervision. Warren has not engaged in any supervisory activities required by Berthel's Supervisory Procedures manual.

4. Respondent, Berthel, failed to disclose information as required by North Dakota law and NASD rules. Specifically, Berthel failed to properly disclose the following information:

- a. A Consent Order entered between Berthel and Warren and the North Dakota Securities Commissioner on October 16, 2003 was not properly disclosed on Berthel's form BD or on Warren's form U-4.
- b. The outside business activities of Mr. Warren were not properly disclosed on the CRD system.

5. Pursuant to Section 10-04-11(1)(m) N.D.C.C., a dealer is required to properly supervise its agents. The facts set forth in paragraph 3 demonstrate routine and systematic failures of this responsibility.

6. Pursuant to Section 10-04-15 N.D.C.C., it is a violation of the Securities Act for a person to misrepresent material facts or to fail to disclose material facts to the Securities Department when required to do so. The facts set forth in paragraph 4 demonstrate violations pursuant to this section.

7. 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.

8. 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.

9. Respondents acknowledge their rights to a hearing on this matter and waive these rights to a hearing and to present arguments to the Commissioner.

10. Respondent agrees to resolve this matter with the Securities Commissioner by this Consent Order, without admitting or denying the Commissioner's Findings set forth herein. This Consent Order resolves only those matters described herein, and does not resolve any other matters, whether currently known or unknown.

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

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

1. Respondents, Berthel and Warren, shall pay a civil penalty of \$20,000 to the North Dakota Securities Department pursuant to NDCC §10-04-16.
2. Respondent, Berthel, shall, contemporaneous with the entry of this Order, consent to a registration agreement.
3. This Order shall be effective upon signature of the Commissioner.

Signed and Sealed this 25<sup>th</sup> day of July, 2004.



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

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**RECEIVED**

**CONSENT TO ENTRY JUL 22 2004  
OF ORDER**

SECURITIES DEPARTMENT  
STATE OF NORTH DAKOTA

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Based on mutual concessions and a willingness to resolve all matters discussed in the foregoing Consent Order, each of the undersigned Respondents, state that:

1. He has read the foregoing Consent Order, and knows and fully understands its contents and effects.
2. The Respondents have been advised of his rights to a hearing with regard to this matter, and has specifically waived his rights to a hearing.
3. The Respondents have been advised that any willful violation of this order is a Class B Felony pursuant to Section 10-04-18(1) N.D.C.C. and is punishable by a \$10,000 fine and 10 years' imprisonment, with respect to a natural person, pursuant to Section 12.1-32-01(3) N.D.C.C. or by a \$35,000 fine with respect to an organization, pursuant to Section 12.1-32-01.1(2) N.D.C.C.
4. The foregoing Consent Order constitutes the entire settlement agreement between the Respondents and the Securities Commissioner, there being no other promises or agreements, either expressed or implied.
5. The Respondents neither admit nor deny the factual determinations of the Commissioner, as set forth in the foregoing Consent Order.
6. The Respondents consent to entry of the foregoing Consent Order by the Securities Commissioner, and does so willingly for the purpose of resolving the issues described in the foregoing Consent Order.

Dated this 21st day of July, 2004.

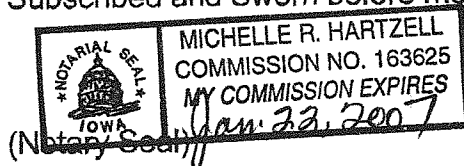
Berthel, Fisher & Company Financial  
Services, Inc.  
701 Tama Street, Bldg. B  
PO Box 609  
Marion, IA 52302-0609

By: Dwight E. Wheeler

Print Name: Dwight E. Wheeler

Its: President

Subscribed and Sworn before me this 21st day of July, 2004.



Michelle R. Hartzell  
Notary Public

State: Iowa County: Linn  
My Commission Expires:

Dated this 19th day of July, 2004.

Lawrence W. Warren

Lawrence W. Warren  
Berthel, Fisher & Company Financial  
Services, Inc.  
931 S Washington St  
Bismarck, ND 58504

Subscribed and Sworn before me this 19th day of July, 2004.

(Notary Seal)

Eve A. Hennessy

Notary Public  
State: ND County: BURLEIGH  
My Commission Expires: 10-19-2007

