

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Berthel Fisher and )  
Company Financial Services, Inc.; )  
and Timothy Hayden; )  
 )  
Respondents. )

CONSENT ORDER

.....  
The North Dakota Securities Commissioner has advised the Respondents, Berthel Fisher and Company Financial Services, Inc.; and Timothy Hayden; 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 Fisher and Company Financial Services, Inc. (Berthel Fisher), is a broker-dealer headquartered in Marion Iowa. Berthel Fisher is, and for all times relevant to this matter, has been registered as a broker-dealer with the Securities Department.
2. From July of 1996 to April of 2005, Respondent, Hayden, was a securities agent associated with Berthel Fisher, and was registered as an agent in North Dakota. Respondent is not currently registered as an agent for any broker-dealer.
3. In November of 2004, the Securities Department received a complaint from a North Dakota resident regarding the Respondents, Berthel Fisher and Hayden. The investigation of the Securities Department revealed as follows:
  - a. From December of 1999 to January of 2001, the North Dakota resident invested more than \$160,000 with Berthel Fisher. The funds constituted virtually all of the North Dakota resident's retirement funds.
  - b. Respondents invested those funds more aggressively than was suitable based on the investment objectives and risk temperament of the investor.
  - c. A majority of these funds were invested in a variable annuity. Respondent, Hayden, did not adequately explain and misrepresented the death benefit provisions of the variable annuity. Specifically, Hayden misstated the provisions regarding the effect that withdrawal of funds would have on the death benefit. These provisions were particularly important, as withdrawal of funds would soon be required due to the age of the complainant.
4. In September of 2005, the Securities Department received an additional complaint from a North Dakota resident regarding the Respondents, Berthel

Fisher and Hayden. The investigation of the Securities Department revealed as follows:

- a. From March to November of 1999, the North Dakota resident invested more than \$55,000 with Berthel Fisher. The funds constituted virtually all of the North Dakota resident's savings and retirement funds.
  - b. Respondents invested those funds more aggressively than was suitable based on the investment objectives and risk temperament of the investor.
5. With respect to both of these complainants, Respondent, Timothy Hayden, used advertising materials which had not been approved by the Respondent, Berthel Fisher. This advertising material made materially misleading statements in violation of N.D.C.C. § 10-04-15.
  6. With regard to the transactions described above, Respondents engaged in unsuitable trading in the accounts of North Dakota residents. These activities constitute dishonest or unethical practices in the securities industry, pursuant to N.D.A.C. §§ 73-02-09-02(3) and 73-02-09-03(6).
  7. Respondent, Hayden, violated N.D.C.C. § 10-04-15, in that he misrepresented the death benefit provisions of the variable annuity that he sold to a North Dakota resident.
  8. Berthel Fisher did not properly supervise Hayden with regard to the activity described above.
  9. Pursuant to N.D.C.C. § 10-04-16(1), 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. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against the Respondents pursuant to N.D.C.C. § 10-04-16(1).
  10. Respondent, Berthel Fisher, has entered into settlement agreements with the complainants and has resolved these matters with the respective complainants.
  11. Respondents acknowledge their rights to a hearing on this matter and waive these rights to a hearing and to present arguments to the Commissioner.
  12. Respondents agree to resolve this matter with the Securities Commissioner by this Consent Order.


13. The following Order is necessary and appropriate in the public interest and for the protection of investors.

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

1. Respondents shall not engage in any fraudulent conduct in North Dakota in violation of N.D.C.C. § 10-04-15.
2. Respondents shall not recommend any securities transaction in an account of a North Dakota investor unless the transaction is suitable based on the investment objectives and risk temperament of the investor.
3. Respondent, Berthel Fisher, shall properly supervise the activities of its agents with regard to all securities related activity in North Dakota.
4. Respondents shall pay a civil penalty of \$8,000, made payable to the North Dakota Securities Department, pursuant to N.D.C.C. § 10-04-16(1).
5. This Order shall be effective upon signature of the Commissioner.

Signed and Sealed this 31 day of OCTOBER, 2006.



  
\_\_\_\_\_  
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 and )  
 Company Financial Services, Inc.; )  
 and Timothy Hayden; )  
 Respondents. )

**CONSENT TO ENTRY  
OF ORDER**

.....

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

- a. He or she has read the foregoing Consent Order, and knows and fully understand its contents and effects.
- b. The Respondents have been advised of their rights to a hearing with regard to this matter, and have specifically waived their rights to a hearing.
- c. The Respondents have been advised that any willful violation of this order is a Class B Felony pursuant to N.D.C.C. § 10-04-18(1) and is punishable by a \$10,000 fine and 10 years' imprisonment, with respect to a natural person, pursuant to N.D.C.C. § 12.1-32-01(3) or by a \$35,000 fine with respect to an organization, pursuant to N.D.C.C. § 12.1-32-01.1(2).
- d. 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.
- e. The Respondents neither admit nor deny the factual determinations of the Commissioner, as set forth in the foregoing Consent Order, and they are specifically precluded from denying those determinations in any forum, public or otherwise, except that this paragraph does not preclude the Respondents from performing testimonial obligations in any judicial or quasi-judicial proceeding. In the context of any such proceeding, this paragraph shall not preclude statements by counsel which reflect anticipated testimony.
- f. The Respondents consent to entry of the foregoing Consent Order by the Securities Commissioner, and do so willingly for the purpose of resolving the issues described in the foregoing Consent Order.

Dated this 21st day of September, ~~2005~~ 2006.

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

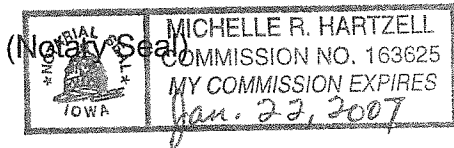
Dwight E. Wheelan  
(sign name)

Dwight E. Wheelan  
(print name)

President Emeritus  
(title)

Subscribed and Sworn before me this 21st day of September, ~~2005~~ 2006

Michelle R. Hartzell  
Notary Public  
State: Iowa County: Linn  
My Commission Expires:



Dated this 21st day of September, ~~2005~~ 2006.

Timothy Hayden  
Timothy Hayden  
1390 S. Winchester Blvd., Suite B3  
San Jose, CA 95128

Subscribed and Sworn before me this 27<sup>th</sup> day of OCTOBER, 2005.

[Signature]  
Notary Public  
State: CALIFORNIA County: SACRAMENTO  
My Commission Expires: MAY 16, 2008

(Notary Seal)

