

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

.....
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 Marion, Iowa. For all times relevant to this matter, Berthel has been registered as a dealer in North Dakota.

2. Respondent, Warren, is an agent employed by and associated with Berthel. For all times relevant to this matter, Warren has been registered as an agent in North Dakota.

3. During 1999 and 2000, respondent Warren solicited two North Dakota residents, Melvin and Francis Gutknecht, husband and wife, to purchase separate variable annuity contracts, along with a portfolio that included bonds and equity investments. The Gutknechts purchased only the variable annuity contracts. Each of these contracts were funded with moneys taken from IRAs. Warren informed the complainants that they did not need to be concerned with fluctuations in the stock market. Warren made this statement because the annuity contracts contained riders that provided for life and death benefit guarantees. These riders are discussed in more detail below.

4. At the time of the initial purchase of the annuity, Francis Gutknecht was 67 years old and would soon be required to take minimum distributions from the variable annuity. The investments inside of the variable annuity policy were almost exclusively equity related investments. The Commissioner finds that those investments were too aggressive for Ms. Gutknecht given her age and employment status. The annuity that the respondents sold to Francis Gutknecht had an income and death benefit rider which contained the following provisions:

- a. Income benefit accumulating at 6% interest, subject to withdrawal adjustment. Benefit can be triggered upon annuitization of contract, which could not be done until 10 years from inception of the contract.

- b. Death benefit accumulating at 5% interest, subject to withdrawal adjustment.

5. At the time of the initial purchase of the annuity, Melvin Gutknecht was 69 years old and would soon be required to take minimum distributions from the variable annuity. The investments inside of the variable annuity policy were almost exclusively equity related investments. The Commissioner finds that those investments were too aggressive for Mr. Gutknecht given his age and employment status. The annuity that the respondents sold to Melvin Gutknecht had an income and death benefit rider which contained the following provisions:

- a. Income benefit accumulating at 5% interest, subject to withdrawal adjustment. Benefit can be triggered upon annuitization of contract, which could not be done until 10 years from inception of the contract.
- b. Death benefit accumulating at 5% interest, subject to withdrawal adjustment.

6. Pursuant sections 73-02-09-02 and 73-02-09-03 N.D.A.C., registered dealers and agents are precluded from recommending the purchase of securities that are not suitable for the investor. The Commissioner's findings, as set forth above, demonstrate that the respondents recommendation of the variable annuities were not suitable for the respective investors.

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.

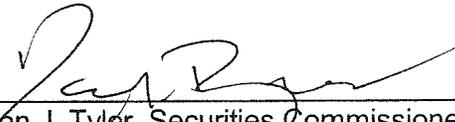
11. The following Order is necessary and appropriate in the public interest.

NOW, THEREFORE, IT IS ORDERED, THAT:

1. Respondents shall pay a civil penalty of \$4,000 to the North Dakota Securities Department pursuant to NDCC §10-04-16.
2. This Order shall be effective upon signature of the Commissioner.

Signed and Sealed this 20th day of October, 2003.





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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and Lawrence W. Warren,)
)
Respondents)

**CONSENT TO ENTRY
OF ORDER**

.....
The undersigned persons, on behalf of Berthel, Fisher & Company Financial Services, Inc. and Lawrence W. Warren, state that they have read the foregoing Consent Order and that they know and fully understand its contents and effects. They further state that they are executing this Consent to Entry of Order on behalf of the Respondents. They acknowledge that respondents have waived their rights to a hearing with respect to this matter, and that they consent 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 16th day of October, 2003.

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

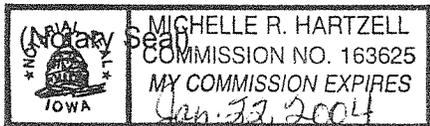
By: Dwight E. Wheelan

Print Name: Dwight E. Wheelan

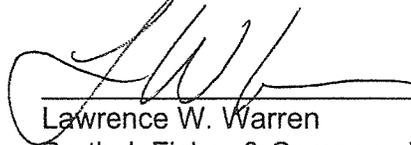
Its: President

Subscribed and Sworn before me this 16th day of October, 2003.

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

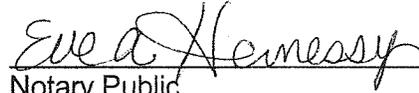


Dated this 13TH day of OCTOBER, 2003.



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

Subscribed and Sworn before me this 13th day of OCTOBER, 2003.



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

(Notary Seal)

EVE A HENNESSY
Notary Public
State of North Dakota
My Commission Expires October 19, 2007