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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

James W. Kellstrom  
Jane M. Kellstrom

Case Number: 03-04298

Names of the Respondents

Berthel, Fisher & Company Financial Services, Inc.  
Max L. Conde

Hearing Site: Little Rock, Arkansas

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For James W. Kellstrom and Jane M. Kellstrom, hereinafter collectively referred to as "Claimants": Scott C. Igenfritz, Esq., Johnson, Pope, Bokor, Ruppel & Burns, P.A., Tampa, Florida and Gary P. Barket, Esq., Gary P. Barket, P.A., Little Rock, Arkansas.

For Berthel, Fisher & Company Financial Services, Inc. ("Berthel") and Max L. Conde ("Conde") hereinafter collectively referred to as "Respondents": Vincent D. Louwagie, Esq. and Jonathan F. Mack, Esq., Anthony Ostlund & Baer, P.A., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: June 13, 2003.

Claimants signed the Uniform Submission Agreement: June 4, 2003.

Statement of Answer filed by Respondents on or about: August 22, 2003.

Respondent Berthel signed the Uniform Submission Agreement: September 3, 2003.

Respondent Conde signed the Uniform Submission Agreement: September 16, 2003.

**CASE SUMMARY**

Claimants alleged the following causes of action: 1) suitability; 2) negligence; 3) negligent supervision; 4) breach of fiduciary duty; 5) violation of Section 23-42-106 of the Arkansas Code Annotated; 6) fraud; and 7) breach of contract. The causes of action relate to the purchase and sale of shares of various securities products in Claimants' account including, but not limited to: America Online; Cisco Systems; Avanex Corporation; JDS Uniphase; Delphi Automotive System Corporation; Lockheed Martin Corporation; AOL Time Warner; Nortel Network; EMC Corporation; Texas Instruments; cash and money market funds; Van Kampen Equity Trust II Technology Fund; and New World Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) out of pocket losses in the amount of \$800,000.00; 2) interest; 3) punitive damages; 4) post-judgment interest at the Arkansas legal rate in effect at the time of the Award; 5) costs; 6) attorneys' fees; 7) an express finding that Claimants prevailed against Respondents on their claim under ACA 22-42-106; and 8) such other relief deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) attorneys' fees; 3) costs; 4) expenses incurred in defending this matter; and 5) expungement of all references to the above captioned arbitration from Respondent Conde's registration records maintained by the NASD Central Registration Depository ("CRD").

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are jointly and severally liable and shall pay to Claimants:

1. Compensatory damages in the amount of \$464,986.00, prejudgment interest specifically excluded;
2. Post judgment interest at the rate of six percent (6%) per annum, accruing thirty (30) days after the date of service of the Award until paid in full;
3. Attorneys' fees in the amount of \$50,000.00 as provided by ASA 16-22-308;
4. Costs in the amount of \$33,000.00; and
5. The sum of \$375.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Berthel is a member firm and a party.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

#### **Adjournment Fees**

Adjournment granted during these proceedings:

September 21-24, 2004, adjournment requested by Respondent = \$ 1,200.00

The Panel has waived \$1,200.00 of the adjournment fees.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session = \$ 450.00

Pre-hearing conference: July 12, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 per session = \$ 2,400.00  
Pre-hearing conferences: December 5, 2003 1 session  
August 23, 2004 1 session

Eight (8) Hearing sessions @ \$1,200.00 per session = \$ 9,600.00  
Hearing Dates: January 25, 2005 2 sessions  
January 26, 2005 2 sessions  
January 27, 2005 2 sessions  
January 28, 2005 2 sessions

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Total Forum Fees = \$12,450.00

The Panel has assessed the total forum fees of \$12,450.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Berthel is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$12,450.00
<u>Total Fees</u>	= \$12,450.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$12,450.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

John A. Davis, III., Esq.	-	Public Arbitrator, Presiding Chairperson
John E. Meador, Jr.	-	Public Arbitrator
Don Winton	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
John A. Davis, III., Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/  
John E. Meador, Jr.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/  
Don Winton  
Non-Public Arbitrator

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Signature Date

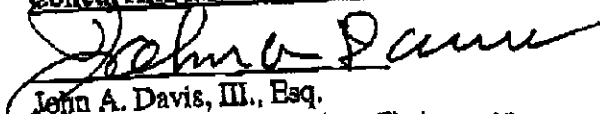
February 10, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**ARBITRATION PANEL**

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John E. Meador, Jr.  
Don Winton

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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Don Winton  
Non-Public Arbitrator

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Signature Date

*2/7/05*  
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Signature Date

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Public Arbitrator

Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

John E. Meador, Jr.

Public Arbitrator

Signature Date

  
Don Winton

Non-Public Arbitrator

2/10/05  
Signature Date

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