

**AWARD**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Claimants

Melvin Gutknecht and Frances Gutknecht

v.

04-03375

Minneapolis, Minnesota

Respondents

Berthel Fisher & Company Financial Services, Inc.  
and Lawrence Wilton Warren

---

Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Melvin Gutknecht and Frances Gutknecht ("Claimants") were represented by Sidney J. Spaeth, Esq., of Vogel, Weir, Hunke & McCormick, LTD, Fargo, North Dakota.

Berthel Fisher & Company Financial Services, Inc. ("Berthel Fisher") and Lawrence Wilton Warren ("Warren"), hereinafter referred to as "Respondents," were represented by Mitchell W. Greenberg, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 4, 2004. The Submission Agreements of Claimants were signed on or about April 30, 2004.

The Statement of Answer was filed jointly by Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren, on or about June 30, 2004. The Submission Agreement of Respondent, Berthel Fisher & Company Financial Services, Inc., was signed on or about May 18, 2004. The Submission Agreement of Respondent, Lawrence Wilton Warren, was signed on or about May 24, 2004.

**CASE SUMMARY**

Claimants asserted causes of action including the following: violation of section 10(b) of the Securities Exchange Act of 1934, violations of the North Dakota Century Code sections 10-04-15 and 10-04-17 and 09-10-03, negligence, negligent misrepresentation, and violation of section 20(a) of the Securities Exchange Act of 1934. The causes of action related to Claimants' allegation that Respondent improperly invested them into two variable annuities, Transamerica Landmark Variable

Annuity and Lincoln Benefit Consultant I Variable Annuity. Claimants alleged that these annuities were unsuitable, given their investment objective of retirement. Claimants also alleged that Respondent Warren stated that these annuities would be "guaranteed," that they could control their distributions and that no fees would be charged. Claimants asserted that Respondents not only failed to disclose the risks of annuities or of potential tax consequences, but also failed to diversify their accounts to protect their investments.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: losses, if any, were sustained as a result of Claimants' own comparative negligence and/or contributory negligence; Respondents acted at all times in good faith; Claimants are barred from recovery because they knowingly assumed the risks of their investments; the Statement of Claim is barred, in whole or in part, based upon the applicable statutes of limitations; and the losses and injuries of which the Claimants complained were caused by economic and market conditions over which Respondents had no control and/or for which Respondents were not responsible.

#### **RELIEF REQUESTED**

Claimants requested an award of \$203,846.17 in compensatory damages, plus commissions, interest, costs, attorneys' fees and for such other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees and asked for the panel to expunge any record of this arbitration claim from Respondent Lawrence Wilton Warren's registration records maintained by the Central Registration Depository ("CRD").

#### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren, are jointly and severally liable for and shall pay to Claimants, Melvin Gutknecht and

Frances Gutknecht, the sum of Thirty Thousand Dollars and No Cents (\$30,000.00) in compensatory damages;

2. Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren, are jointly and severally liable for and shall pay to Claimants, Melvin Gutknecht and Frances Gutknecht, arbitration costs in the amount of Three Hundred Dollars and No Cents (\$300.00); and
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including expungement, are denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300

#### **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. In this matter, the member firm is Berthel Fisher & Company Financial Services, Inc.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

#### **Adjournment Fees**

Adjournments granted during these proceedings:

December 13-14, 2004

Adjournment jointly requested by all parties

(Fee waived by the panel) = \$ 1,125

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$ 1,125 = \$ 1,125

Pre-hearing conference: 09/24/2004 1 session

Four (4) Hearing sessions with Panel x \$ 1,125 = \$ 4,500

Hearing Dates: 04/18/2005 2 sessions  
04/19/2005 2 sessions

---

Total Forum Fees = \$ 5,625

The Arbitration Panel has assessed \$ 5,625 of the forum fees jointly and severally to Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren.

**EEE SUMMARY**

Claimants, Melvin Gutknecht and Frances Gutknecht, are jointly and severally liable for:

Initial Filing Fee	= \$ 300
Total Fees	= \$ 300
<u>Less payments</u>	<u>= \$ 1,425</u>
Balance Refunded By NASD Dispute Resolution	= \$ 1,125

Respondent, Berthel Fisher & Company Financial Services, Inc., is liable for:

<u>Member Fees</u>	<u>= \$ 5,200</u>
Total Fees	= \$ 5,200
<u>Less payments</u>	<u>= \$ 5,200</u>
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren,  
are jointly and severally liable for:

Forum Fees	= \$ 5,625
Total Fees	= \$ 5,625
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,625

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

**ARBITRATION PANEL**

Jeffrey W. Jacobs, Esq. - Public Arbitrator, Presiding Chair

David F. Schmitz - Public Arbitrator

Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Jeffrey W. Jacobs, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
David F. Schmitz  
Public Arbitrator

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

\_\_\_\_\_  
Bruce J. Nerland, Esq.  
Non-Public Arbitrator

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

4/22/05  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 04-03375  
Award Page 5 of 5

Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren,  
are jointly and severally liable for:

Forum Fees	= \$ 5,625
Total Fees	= \$ 5,625
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,625

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

**ARBITRATION PANEL**

Jeffrey W. Jacobs, Esq. - Public Arbitrator, Presiding Chair  
David F. Schmitz - Public Arbitrator  
Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Jeffrey W. Jacobs  
Jeffrey W. Jacobs, Esq.  
Public Arbitrator, Presiding Chair

4-21-05  
Signature Date

David F. Schmitz  
David F. Schmitz  
Public Arbitrator

Signature Date

Bruce J. Nerland, Esq.  
Bruce J. Nerland, Esq.  
Non-Public Arbitrator

Signature Date

4/22/05  
Date of Service (NASD use only)

Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren,  
are jointly and severally liable for:

Forum Fees	= \$ 5,625
Total Fees	= \$ 5,625
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,625

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

**ARBITRATION PANEL**

Jeffrey W. Jacobs, Esq. - Public Arbitrator, Presiding Chair  
David F. Schmitz - Public Arbitrator  
Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Jeffrey W. Jacobs, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
David F. Schmitz  
Public Arbitrator

4/21/05  
Signature Date

Bruce J. Nerland, Esq.  
Non-Public Arbitrator

Signature Date

4/22/05  
Date of Service (NASD use only)

NASD Dispute Resolution  
Arbitration No. 04-03375  
Award Page 5 of 5

Respondents, Berthel Fisher & Company Financial Services, Inc. and Lawrence Wilton Warren,  
are jointly and severally liable for:

Forum Fees	= \$ 5,625
Total Fees	= \$ 5,625
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 5,625

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

**ARBITRATION PANEL**

Jeffrey W. Jacobs, Esq. - Public Arbitrator, Presiding Chair

David F. Schmitz - Public Arbitrator

Bruce J. Nerland, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Jeffrey W. Jacobs, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
David F. Schmitz  
Public Arbitrator

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

  
\_\_\_\_\_  
Bruce J. Nerland, Esq.  
Non-Public Arbitrator

4-22-05  
\_\_\_\_\_  
Signature Date

4/22/05  
\_\_\_\_\_  
Date of Service (NASD use only)