

**AWARD  
NASD DISPUTE RESOLUTION**

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**In the Matter of the Arbitration Between:**

Claimants David Lingwall; Ronald Shoop, individually and as Trustee of The Bertha Shoop Trust; and, Sidney and Susan Jacobson, vs. Respondent/ Third-Party Claimant Berthel Fisher & Company Financial Services, Inc., vs. Third-Party Respondent Emily Halsband

**Case Number:** 05-02502

**Situs:** Des Moines, Iowa

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**NATURE OF DISPUTE:** *Customer v. Member v. Associated Person*

**REPRESENTATION OF PARTIES:** Claimants David Lingwall; Ronald Shoop, individually and as Trustee of The Bertha Shoop Trust; and Sidney and Susan Jacobson, hereinafter referred to as "Claimants": John D. Hudson, Esq. of the firm of Williams, Blackburn, Hudson & Maharry, P.L.C., located in Des Moines, Iowa.

Respondent/ Third-Party Claimant Berthel Fisher & Company Financial Services, Inc., hereinafter referred to as "Berthel Fisher": Martin Q. Ryan, Esq., of the firm of Mora Baugh Waitzman & Unger LLC, located in Chicago, Illinois.

Third-Party Respondent Emily Halsband did not enter an appearance in this matter.

**FILING DATES:** Claimants' Statement of Claim filed on May 11, 2005.  
David Lingwall's Uniform Submission Agreement signed on May 10, 2005.  
Ronald Shoop's Uniform Submission Agreement, individually and as Trustee of The Bertha Shoop Trust, signed on April 23, 2005.  
Sidney and Susan Jacobson's Uniform Submission Agreement signed on April 28, 2005.

Berthel Fisher's Statement of Answer filed on July 27, 2005.  
Berthel Fisher's Uniform Submission Agreement signed on June 15, 2005.  
Berthel Fisher's Third-Party Claim filed on August 17, 2005.

**CASE SUMMARY:** Claimants asserted the following causes of action: breach of fiduciary duty; negligence; unsuitability; misrepresentation; violation of Iowa statute regarding selling unregistered securities; conversion; and negligent supervision. Claimants' claim involved the fraudulent issuance of checks to the Third-Party Respondent Halsband that the Claimants were told were for an investment.

Berthel Fisher denied the claims against it, and asserted several affirmative defenses. In its Third-Party Claim, Berthel Fisher sought an award of indemnification and contribution from the Third-Party Respondent, Emily J. Halsband.

**THIRD-PARTY CLAIM**

**AWARD DATA:**

**RELIEF REQUEST:**

Claim: \$104,500.00\*

Award: \$104,500.00

\*Originally requested damages of \$100,00.00, but increased amount in the Motion for Default.

**OTHER ISSUES:** By Motion dated on or about February 3, 2006, Berthel Fisher opted to proceed against Third-Party Respondent, Emily J. Halsband ("Halsband") pursuant to Rule 10314(e) of the *NASD Code of Arbitration Procedure* ("Code"). The arbitrator determined that Halsband was properly served notice of the Statement of Claim and Notification of the Arbitrator by certified mail, and that Halsband is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

On or about February 23, 2006, Claimants' filed their letter advising that their claims against Berthel Fisher had been resolved and that the case could be dismissed from the docket. Pursuant to their request, the claims they asserted against Respondent/ Third-Party Claimant Berthel Fisher & Company Financial Services, Inc. are dismissed with prejudice.

**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Third-Party Respondent, Emily J. Halsband is liable for and shall pay to Respondent/ Third-Party Claimant Berthel Fisher & Company Financial Services, Inc. the sum of \$104,500.00 as actual damages;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees; and,
3. All remaining claims asserted in this arbitration between Third-Party Respondent, Emily J. Halsband and Respondent/ Third-Party Claimant Berthel Fisher & Company Financial Services, Inc., including any requests for punitive and/or exemplary damages, are denied in their entirety.

**FEES:**

**Filing Fees:**

The \$225.00 filing fee previously deposited with NASD Dispute Resolution by Claimants shall be retained by NASD Dispute Resolution.

The \$1,000.00 filing fee previously deposited with NASD Dispute Resolution by Berthel Fisher shall be retained by NASD Dispute Resolution.

**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, Berthel Fisher & Company Financial Services, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

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**Forum Fees and Assessments**

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

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 1,125.00
Pre-hearing conference: September 28, 2005 1 session	
<u>Default Judgment Forum Fee</u>	<u>= \$ 300.00</u>
Total Forum Fees	= \$ 1,425.00

The arbitrator assessed all forum fees against Third-Party Respondent, Emily J. Halsband.

**ARBITRATION PANEL**

Robert W. Edler, Esq. - Sole Public Arbitrator



Robert W. Edler, Esq.  
Sole Public Arbitrator



Signature Date

February 28, 2006

3/1/06

Date of Service (For NASD-DR office use only)