

State of Missouri
Office of Secretary of State

Case No. AP-07-21

IN THE MATTER OF:

BERTHEL, FISHER & COMPANY
FINANCIAL SERVICES, INC.
701 Tama St, Bldg B.
Marian, Iowa 52302,

Respondent.

CONSENT ORDER

SUMMARY OF ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Division") alleges that Berthel, Fisher, & Company Financial Services, Inc. ("Respondent") failed to supervise former registered representative, James Norris Holland Jr., who fraudulently sold securities in his company Solomon James, Inc. to Respondent's customers and who engaged in dishonest or unethical practices while employed by Respondent and that these constitute grounds to revoke, bar or censure Respondent's registration in Missouri pursuant to Section 409.4-412, RSMo. (Cum. Supp. 2006).
2. Respondent and the Division desire to settle the allegations and the matters raised by the Division relating to Respondent's alleged activities.

CONSENT TO JURISDICTION

3. Respondent and the Division stipulate and agree that the Commissioner has jurisdiction over this Respondent and these matters pursuant to the Missouri Securities Act, Chapter 409, et seq.
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2006), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.

AGREEMENT TO COOPERATE

7. Respondent has and will agree to continue to cooperate with the Division's investigation in this matter and will provide information and discovery relating to the subject matter of this investigation.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent neither admits nor denies the allegations made by the Division in their petition for Consent Order (Attachment A), but consent to the Commissioner's Findings of Fact and Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; or (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party, including, but not limited to, positions inconsistent with the Findings or Conclusions set forth below.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith

settlement.

COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. Respondent has a main office address of 701 Tama Street, Building B, Marion, Iowa 52302. Respondent has been a registered broker-dealer in Missouri since April 30, 1985 and is a member of the National Association of Securities Dealers ("NASD"). Respondent is registered with the Central Registration Depository System ("CRD") with the number 13609.

JAMES NORRIS HOLLAND, JR.

13. James Norris Holland, Jr. ("Holland"), with a residential address at 115 Pinecone, Lawrence, Kansas 66046, was a registered representative of Respondent, from January 3, 1994 to August 30, 2005. During some of that time, Holland did business as Solomon James Financial and had an office located at 715 Indiana Street, Baldwin City, Kansas 66006.
14. Holland has been a registered representative in Missouri since June 30, 1993. Holland was registered with the Central Registration Depository System ("CRD") with the number 2150318.
15. Holland was terminated by Respondent on August 30, 2005, for failure to follow company procedures.
16. In 2005, Holland had approximately eighty (80) customers.
17. During the time that Holland was a registered representative with Respondent, and when he was providing services to his retired customers, there was ample discussion and coverage in mass media, industry journals and other sources that called into question the suitability of variable annuities as an investment vehicle for some investors, including writings in *BusinessWeek*, *CNNMoney*, *Entrepreneur*, *Forbes.com*, and *USAToday*.
18. The NASD, while Holland was a member, issued "Notices to Members" on at least five (5) occasions addressing the suitability of variable annuities as investment vehicles.
19. In May 2003, the NASD issued an Investor Alert indicating the key issues which agents should disclose to customers, including liquidity issues, potential surrender charges, tax penalties, fees and market risk.
20. In June 2004, the United States Securities and Exchange Commission ("SEC") and the NASD issued a report^[1] which found that the "high fees and surrender charges combine with other factors to make variable insurance products inappropriate for many investors."

MISSOURI RESIDENT 1

21. In October 1998 a Missouri resident and retired Hallmark employee who was then sixty three (63) years old ("MR1"), invested six hundred ninety thousand dollars (\$690,000) with Holland. Holland originally recommended that MR1 invest his money into mutual funds. Based on this advice MR1 invested four hundred and seventeen thousand dollars (\$417,000) into Putnam B Share mutual funds, which featured a seven-year (7) surrender charge period. The manner in which Holland recommended the investment be structured caused MR1 to miss four (4) breakpoints which would have resulted in lower fees for MR1.
22. In October 2002, Holland recommended that MR1 switch approximately three hundred and fifteen thousand dollars (\$315,000) of MR1's mutual funds to an Allianz Valuemark IV Variable Annuity with a seven-year (7) surrender charge period. Based on Holland's recommendation MR1 switched three hundred and fifteen thousand dollars (\$315,000) to the Allianz Variable Annuity.
23. In May 2003, Holland recommended that MR1 switch approximately eighty thousand dollars (\$80,000) of MR1's mutual funds to an Allianz High Five Variable Annuity with a seven-year (7) surrender charge period. Based on Holland's recommendation MR1 switched eighty thousand dollars (\$80,000) to this Allianz Variable Annuity.
24. In March 2004, Holland recommended that MR1 switch the Allianz Valuemark IV Variable Annuity to an ING Variable Annuity with a nine-year (9) surrender charge period. Based on Holland's recommendation MR1 switched to the ING Variable Annuity.
25. In April 2004, Holland recommended that MR1 switch the Allianz High Five Variable Annuity to an ING Variable Annuity with a nine-year (9) surrender charge period. Based on Holland's recommendation MR1 switched these funds to the ING Variable Annuity.
26. In February 2005, Holland recommended that MR1 withdraw approximately one hundred and fifty thousand dollars (\$150,000) from the ING Variable Annuity purchased in April 2004 to purchase an Amerus Life Indexed Annuity, and MR1 accepted this recommendation. The Amerus equity indexed annuity has a surrender charge period of fourteen years (14).
27. Holland generated gross commissions from MR1's account of ninety-two thousand one hundred and seventy-seven dollars (\$92,177), and netted a total of seventy five thousand nine hundred and seventy-four dollars (\$75,974) from variable annuity sales.

28. MR1 paid surrender charges of over thirty-six thousand dollars (\$36,000) for the switches described above.

MISSOURI RESIDENT 2

29. In September 2000, a Missouri resident and Hallmark employee (“MR2”) became a client of Holland. MR2 invested over four hundred and fifty thousand dollars (\$450,000) with Holland. At Holland’s recommendation, MR2 invested over three hundred and two thousand dollars (\$302,000) into Putnam B Share Mutual Funds, which featured a seven-year (7) surrender charge period. The manner in which Holland recommended that MR2 structure the investment caused MR2 to miss four breakpoints which would have resulted in lower fees for MR2.
30. In October 2002, Holland recommended that MR2 switch from the Putnam B Share Mutual Funds to an Allianz Variable Annuity which featured a seven-year (7) surrender charge period. Based on Holland’s recommendation MR2 switched to the Allianz Variable Annuity.
31. In February 2004, Holland recommended that MR2 switch from the Allianz Variable Annuity to an ING variable annuity which featured a nine-year (9) surrender charge period. Based on Holland’s recommendation MR2 switched to the ING Variable Annuity.
32. Holland generated gross commissions of seventy thousand four hundred and eighty-eight dollars (\$70,488) from MR2’s account, and netted a total of fifty-eight thousand eight hundred and sixty one dollars (\$58,861).
33. MR2 paid surrender charges of eighteen thousand one hundred and twelve dollars (\$18,112) for the switches described above.

MISSOURI RESIDENT 3

34. A sixty nine (69) year-old retired Missouri resident (“MR3”) became a client of Holland. Holland recommended that MR3 purchase a variable annuity for seventy thousand dollars (\$70,000) from funds in MR3’s 401(k) plan, and:
- a. Holland told MR3 it was a “safe and secure” investment and MR3 wouldn’t have to worry about her money;
 - b. MR3 stated that she doesn’t remember having a choice of how to invest and stated “basically the decisions were left up to Holland;”
 - c. MR3 stated that she has no knowledge of investing and that she is “not good with that kind of stuff.” MR3 stated, “I basically have to trust the person I’m working with to do the right thing.”
 - d. MR3 stated that MR3 did not understand riders or annuitization.
35. MR3 did not know if MR3 was receiving monthly periodic payments or annuitization payments.

MISSOURI RESIDENT 5

36. In 2000, a Missouri resident (“MR5”), a fifty six (56) year-old retired person, was contacted by Holland. Holland originally recommended that MR5 invest in mutual funds and a real estate investment trust. MR5 stated that MR5 relied on Holland’s advice regarding investment choices.
37. In 2003, Holland called MR5 and wanted to meet with MR5 to discuss a variable annuity in ING. This variable annuity in ING was the only product that was discussed. MR5 stated that based on Holland’s recommendation, MR5 purchased a variable annuity for four hundred and fifty thousand dollars (\$450,000) for the purpose of protecting MR5’s investment assets.
38. MR5 stated that he is fairly unsophisticated and not very market-savvy, but feels he probably has some knowledge. MR5 stated he understood a little about surrender fees, early withdrawal penalties and charges, but was not sure about annuitization or riders or whether those were discussed. MR5 stated that the variable annuity represents most of MR5’s retirement funds.

MISSOURI RESIDENT 7

39. In July 2004, a Missouri resident (“MR7”), a retired person who was a sixty two (62) year-old widower, contacted Holland regarding his pension fund of over six hundred thousand dollars (\$600,000). MR7 stated that Holland met with MR7 and advised MR7 to invest the proceeds of his pension plan into a Jackson National Life Variable Annuity.
40. Holland, among other things:
- a. Recommended that MR7 invest five hundred and forty-four thousand eight hundred and forty-seven dollars and seventy-eight cents (\$544,847.78) of MR7’s 401(k) into a Jackson National Life (“JNL”) Perspective II Variable Annuity.
 - b. Recommended that MR7 purchase a guaranteed minimum income benefit rider (“GMIB”) in the JNL Perspective II

Variable Annuity which cost MR7 0.6% more per year in fees.

41. MR7 purchased the JNL policy with the GMIB rider and placed his funds in the sub-accounts recommended by Holland.
42. Holland received a check made out to Jackson National Life for ninety-three thousand four hundred and sixty dollars and thirty nine cents (\$93,460.39) from MR7's profit-sharing plan approximately two (2) weeks after investing MR7's first check as described above. In a written statement to the Division, Holland stated, among other things, that:
 - a. Holland placed the check from MR7's profit sharing plan for ninety-three thousand four hundred and sixty dollars and thirty nine cents (\$93,460.39) into a safe in Holland's office for approximately four (4) months;
 - b. Holland did not want to put this money into the market as he felt the market was overvalued;
 - c. He did not anticipate the rally that the market had in the fourth quarter of 2004;
 - d. He made a mistake in holding the check; and
 - e. He did not know that holding the check violated any compliance procedures at his firm.
43. Holland attempted to reimburse MR7 for lost interest on the investment described above by asking Respondent to issue a check to MR7 for three hundred and fifty dollars (\$350) and by sending MR7 a case of Omaha Steaks.
44. In an interview with MR7 on March 10 and June 6, 2005, MR7 told an investigator with the Division, among other things, that:
 - a. MR7 did not recall ever investing in anything other than his company's retirement program before MR7's investment with Holland;
 - b. The money invested with Holland consisted of over 75% of MR7's net-worth and 100% of MR7's liquid net-worth;
 - c. Holland did not explain the fee structure of the JNL Perspective II Variable Annuity;
 - d. MR7 had no idea what a GMIB rider was;
 - e. MR7 did not know what annuitization meant;
 - f. When annuitization was explained to MR7 by a Division investigator, MR7 stated that he would not annuitize the policy;
 - g. MR7 did not understand where Holland was going to place the funds, and Holland simply stated that Holland would take care of MR7;
 - h. It was Holland's decision not to invest the check; and
 - i. Holland told MR7 that Holland thought it would be a better time to invest this money after the first of the year.

HOLLAND

45. On July 13, 2005, in an informal interview with the Division and The Missouri Department of Insurance, Holland stated, among other things:
 - a. Holland had been providing investment advice for fifteen (15) years and that he believed that his clients trusted and relied on him.
 - b. Variable annuity prospectuses were extremely hard to read and the fees added up over time.
 - c. Holland made higher commissions selling variable annuities than he made selling mutual funds.
 - d. Variable annuities were suitable for most of Holland's clients and a majority of Holland's clients were invested in variable annuities.
 - e. MR7 was an unsophisticated investor that did not want to lose principal. Holland stated that MR7 did not read the annuity prospectus.
 - f. Holland put over 75% of MR7's net worth into an annuity.
 - g. Holland did not consider these clients' need for liquidity a big issue. Holland stated that if MR7 needed more than the 12% penalty free withdrawal, MR7 could take out a mortgage or credit line on MR7's house.
 - h. Holland explained annuitization to MR7 by telling MR7 that MR7 could take an income stream from MR7's investment for life.

- i. Holland stated that, "Holding the check [for approximately ninety three thousand dollars (\$93,000) from MR7] was a bad decision . . . Holding the check was a simple, stupid oversight."
 - j. A certificate of deposit was a safe investment, but Holland did not sell them because he could not "get [a certificate of deposit] in a variable annuity."
 - k. Holland's typical clients were already in an IRA and not seeking tax-deferral, therefore Holland did not consider tax-deferral a benefit when recommending a variable annuity.
 - l. "And what I'm telling you guys is that practically speaking, these people don't conceptually want to take the time to understand. All they do is they look at me and they trust me, and they're relying on me. And so his daughter comes in and says, oh geeze, you can't trust [Holland]. . . he's been sitting on your check, you know. He's hiding things. . . Then all of a sudden they don't understand nothing. But, you know, the reality is that if you go to every client, especially unsophisticated investors, if you go to them and you try to help get them. . . really, if you sat down with everybody, you know, that's in my business and you did a section, a cross section of maybe their typical employ. . . especially a Hallmarker. If you get a typical Hallmarker, you're talking about people that are blue collar that have five hundred thousand dollars (\$500,000) and never read the Wall Street Journal in their life. . . And so for them to conceptually to be able to understand these things, you guys, the reality is they don't."
46. At a subsequent interview by an investigator at the Division, Holland stated that he had gone through "variable annuity contracts for years" and had really dissected the variable annuity prospectus like a "brain surgeon." Holland, however, did not understand the intricacies of these variable annuity policies and misstated the features on more than one occasion; including but not limited to, telling an investigator at the Division that the tax liability for the death benefit on a variable annuity was the same as the tax liability for the death benefit on a life insurance policy and misstating the fee structure on a variable annuity.
47. On May 12, 2005, Respondent sent a letter to the Division that stated, among other things, that checks should not be held by a Respondent representative for more than twenty-four (24) hours.
48. In March 2006, Holland spoke to an investigator with the Division and stated that at Respondent's annual conference, variable annuity wholesalers presented their products and "sold their stuff" and that these wholesalers "talked about the good, not the bad aspects of their products." Holland stated that he did not remember that Respondent provided any training about how to compare different variable annuities or how to compare variable annuities with mutual funds. Holland stated:
- a. that Respondent did not provide information or training about "who to sell or not to sell variable annuities to;"
 - b. that Respondent did not provide information or training about a customer's need for liquidity in the sale of variable annuities; and
 - c. that Holland met with variable annuity wholesalers in Holland's office.
49. An investigation by the Division revealed that:
- a. Respondent documented its approval of Holland's customers' purchases of variable annuities sometimes as long as eight (8) months after the sale took place.
 - b. Holland generated commissions from the sale of variable annuities in excess of ninety thousand dollars (\$90,000) in 2002. In 2004, Holland generated over one hundred and fifty thousand dollars (\$150,000) in commissions from the sale of variable annuities to eight (8) Missouri customers.

SELLING SECURITIES IN SJS

50. In 2001, Holland formed Solomon James Sports, Inc. ("SJS"). This company was formed, according to Holland, "to handle the representation of professional sports athletes."
51. During annual reviews of Holland's office, one of Respondent's examiners noted that Holland was operating SJS.
52. Holland told the Division that he always contacted Respondent's home office and relayed information to them when Holland was about to do something he "had not done before."
53. In March 2001, Holland contacted MR2 about investing in SJS. Holland provided information to MR2 about SJS. This information included, among other things, the following:
- a. A twelve-page (12) executive summary (the "Executive Summary") that contained information about the company, its history, the management, advisory board, consultants, objectives, growth, financial information, and investment valuation.
 - b. Four (4) pages of promotional material about SJS that included, among other things, the following:

- i. An SJS Mission Statement;
 - ii. Testimonials from Respondent customers and others relating to Holland's character and integrity;
 - iii. A financial services document that stated among other things, the following:
 - A. That financial services were to be provided by Respondent;
 - B. All accounts were insured by the Securities Insurance Protection Corporation ("SIPC"); and
 - C. That the SIPC policies provided insurance against fraud for up to one hundred million dollars.
 - iv. The investment valuation in the Executive Summary stated, among other things, that:
 - A. Solomon James Inc. expects to be operating at a profit within twenty four (24) months of the offering date, January 24, 2004.
 - B. Solomon James Inc. expects to double its earnings each year starting at year three (3). Earnings expectations are sixty thousand dollars (\$60,000) year three (3), one hundred and twenty dollars (\$120,000) year four (4), and two hundred and forty dollars (\$240,000) year five (5).
54. In the summer of 2001, MR2 invested thirty thousand dollars (\$30,000) in SJS through Holland. Holland set up an IRA for MR2 at a bank to act as custodian for the MR2's investment in SJS. The statements from the bank list Holland as the registered representative and Respondent as the broker-dealer on the IRA. In September 2001, MR2 invested another ten thousand dollars (\$10,000) in SJS with Holland.
55. On March 20, 2006, Holland went to MR2's house. MR2 told Holland that MR2 wanted MR2's money out of the IRA. Holland told MR2 that the money had been spent.
56. During this March 2006 meeting, MR2 reported that Holland stated that he was forming a new company and that all the shareholders of SJS would be shareholders of this new entity. Holland stated that MR2 would have to pay a 1% fee per year to be a shareholder in the new entity. Holland stated that they would not be profitable for ten (10) years. Holland told MR2 not to tell anyone about this.
57. In or about 2001, MR2 stated that Holland contacted MR5 to invest in SJS. MR5 was provided documents similar to the documents received by MR2. MR5 invested forty thousand dollars (\$40,000) with Holland in SJS. Holland opened a custodial IRA account at a bank for MR5's investment in SJS. The statements from the bank listed Holland as the registered representative and Respondent as the broker-dealer on the IRA.
58. On March 21, 2006, MR5 stated that:
- a. Holland contacted MR5 regarding SJS;
 - b. Holland stated that he was starting up a new investment company and that it was being held up by the state of Missouri because he wanted to be licensed in Missouri and Kansas. The shares in SJS would be transferred and the investors in SJS would be investors in the new investment company;
 - c. She told Holland that she did not want to put money in the new company but wanted MR5's money returned to MR5; and
 - d. Holland told MR5 not to tell anyone about this new company.
59. In March 2006, Holland spoke to an investigator with the Division and stated that he had sold investments in SJS to nine (9) investors. All of the investors in SJS were customers of Respondent. Holland stated that he was not sure if he had given investors a written disclosure document but stated that he might have made disclosures orally.
60. Holland stated that he had discussed SJS with the officers of Respondent and that he listed this company on Holland's outside business activities. Holland thought that he discussed selling securities in SJS with the officers of Respondent as well.
61. An investigation by the Division revealed that the SIPC website states that SIPC does not insure against fraud.
62. A review of the records with the Division revealed that the securities in SJS were not registered to be sold in the State of Missouri.
63. Holland did not inform investors that the securities in SJS were not registered with the Division.
64. Holland provided testimonials that purported to be quotes from individuals relating to Holland's character and integrity; however, these same testimonial statements were attributed to different people in another testimonial document Holland created.

65. Holland omitted to disclose the following material information to investors in SJS:
 - a. The risks factors associated with an investment in SJS;
 - b. The method or manner in which SJS would employ to “double profits starting in year three”; and
 - c. That the testimonials that purported to be quotes from individuals relating to Holland’s character and integrity were attributed to different people in another testimonial document.
66. A review of Holland’s CRD record reveals that Holland disclosed on the CRD that he was employed as the CEO of SJS during the time he was registered with Respondent.
67. Respondent failed to have procedures in place and a system for applying these procedures to reasonably supervise Holland by:
 - a. Failing to have an adequate system to ensure that incoming mail was reviewed;
 - b. Failing to have an adequate system to review with registered representatives the Firm’s procedures regarding receipt of customer funds;
 - c. Failing to have an adequate system to timely review new account information and investment objectives on customer accounts to determine if registered representatives’ recommendations were suitable for the customer;
 - d. Failing to have an adequate system to review customer account information to determine if registered representatives’ recommendations were adequately diversifying customer accounts;
 - e. Failing to have an adequate system to train registered representatives to disclose features in variable annuities;
 - f. Failing to have an adequate system to adequately train Holland on liquidity issues, and tax deferral;
 - g. Failing to have an adequate system to review disclosures that registered representatives orally made to variable annuity purchasers;
 - h. Failing to have an adequate system to review Holland’s customer accounts for suitability;
68. The Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
69. The Commissioner has authority to enter this Consent Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2006), which provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.
70. This Consent Order is in the public interest.

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations and findings set forth above and on the consent of Respondents and the Division, finds the following Consent Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo.

NOW, THEREFORE, it is hereby ordered that:

1. Respondent will retain, at its expense, an outside consultant (“Consultant”) not unacceptable to the Commissioner, no later than one (1) month after the execution of this Consent Order. Within six (6) months of the execution of this Order, the Consultant will furnish an initial report to Respondent concerning Respondent’s supervisory and compliance- related policies, procedures and practices and will make recommendations to improve these activities. If the Consultant becomes unable to perform his or her duties, Respondent shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner.
2. The Consultant will prepare follow-up reports twelve (12), eighteen (18), and twenty-four (24) months following the execution of this Consent Order unless the Consultant affirmatively determines that such follow-up reports are unnecessary. These follow-up reports, if any, will make further recommendations and discuss the extent to which Respondent has implemented the Consultant’s earlier recommendations.
3. Respondent will provide to the Division copies of all reports prepared by the Consultant. The Division may speak with the Consultant at any time during the period that the Consultant is retained by Respondent. Any costs and/or fees associated with the Division’s speaking with the Consultant shall be borne by the Division.
4. Respondent will promptly adopt and implement the processes, procedures and practices recommended by the Consultant, however, Respondent may propose alternative procedures (“Alternative Procedures”) designed to achieve the same objective

or purpose as those that were recommended by the Consultant. Respondent may adopt the Alternative Procedures if the Consultant agrees that Respondent's proposed procedures will achieve the same objectives or purposes as the Consultant's original recommendations. In the event that Respondent and the Consultant disagree regarding any recommendation by the Consultant, Respondent shall have thirty (30) days to appeal such recommendation to the Commissioner and shall be bound by the decision of the Commissioner.

5. Respondent will make available upon request by the Division all written communications between Respondent, its employees and the Consultant, as well as all documents that the Consultant has advised Respondent in writing that the Consultant reviewed or relied upon in connection with this engagement.
6. For a period of three (3) years following the conclusion of the Consultant's work, Respondent, its affiliates and any of their officers may not employ or hire the Consultant in any capacity.
7. Respondent is ordered to reimburse the surrender fees incurred by the Missouri residents as a result of the variable annuity switches in the accounts of these investors in the amount of fifty-two thousand and sixty-five dollars (\$52,065). This money shall be sent to the Division within ten (10) business days and made payable to the Missouri Investor Restitution Fund and will be distributed by that fund to the Missouri investors listed in Exhibit 1 and in the amounts as identified in that exhibit;
8. Respondent is ordered to pay to Missouri investors in Solomon James, Inc the sum of sixty thousand dollars (\$60,000). This money shall be sent to the Division within ten (10) business days and made payable to the Missouri Investor Restitution Fund and will be distributed by that fund to the Missouri investors identified in Exhibit 2 and in the amounts identified in that exhibit;
9. Respondent will pay to MR7 two thousand seven hundred and sixty-four dollars and eighty cents (\$2,764.80) for its failure to invest MR7's check. In addition, Respondent will pay all surrender fees to release MR7 from the JNL Variable Annuity, as of April 18, 2007, this amount was thirty-eight thousand one hundred thirty-nine dollars and thirty-four cents (\$38,139.34). Respondent shall send all funds to release MR7 from this JNL Variable Annuity to the Division within ten (10) business days and made payable to the Missouri Investor Restitution Fund and will be distributed by that fund to MR7 as identified in Exhibit 3;
10. Respondent is ordered to pay a civil penalty in the amount of fifty thousand dollars (\$50,000) made payable to the State of Missouri, and delivered to the Division, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Such amount shall be due and payable within ten (10) business days from date of this Consent Order is executed;
11. Respondent is ordered to pay to the Investor Education and Protection Fund the sum of fifteen thousand dollars (\$15,000) made payable to the State of Missouri, and the Secretary of State shall forward these funds to the Investor Education and Protection Fund. This amount shall be due and payable within ten (10) business days from the date the Consent Order is executed;
12. Respondent is ordered to pay twelve thousand five hundred dollars (\$12,500) as the cost of this investigation. This amount shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be due and payable within ten (10) business days from the date this Consent Order is executed; and
13. Respondent will pay its own costs and attorneys fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 17TH DAY OF MAY, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Berthel Fisher & Company Financial Services, Inc.

Approved as to Form

[\[1\]](#) Joint SEC/NASD staff Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products, Dated June 9, 2004, Office of Compliance Inspections and Examinations United States Securities and Exchange Commission.