

State of Missouri
Office of Secretary of State

Case No. AP-11-12

IN THE MATTER OF:

BERTHEL FISHER & COMPANY
FINANCIAL SERVICES, INC., CRD NO. 13609;

Respondents

Serve: Berthel Fisher & Company Financial Services, Inc. at:
701 Tama Street, Building B
Marion, IA 52302

CONSENT Order

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") alleges that Berthel Fisher & Company Financial Services, Inc. ("Respondent"), through a registered representative of Respondent, violated Section 409.3-301, RSMo. (Cum. Supp. 2009) by offering to sell unregistered securities (the "Allegation").
2. The Enforcement Section contends the source of the Allegation is an article published in the St. Louis Business Journal on November 19, 2010.
3. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Allegation.

CONSENT TO JURISDICTION

4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
5. Respondent and Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), 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

6. Respondent waives its right to a hearing with respect to this matter.
7. Respondent waives any right that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this 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.
8. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

9. Respondent and the Enforcement Section 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.
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 factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (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; or (c) right to make public statements that are factual.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
12. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

A. Respondent and Related Parties

13. Berthel Fisher & Company Financial Services, Inc. ("Berthel") is a Missouri-registered broker-dealer. Berthel's home office is located at 701 Tama Street, Building B, Marion, Iowa 52302. Berthel has ten branch offices located in the State of Missouri. Berthel is registered through the Central Registration Depository System ("CRD") with number 13609.

B. Enforcement Section Investigation

14. The *St. Louis Business Journal* ("*STLBJ*") is a weekly periodical available to the general public in print and digital form.
15. On November 19, 2010, the *STLBJ* published an article (the "November 19th article") about a private placement offering for a movie to be titled "3 Nights in August."
16. The November 19th article quoted Anthony Bartlett, a registered representative of Berthel, ("Bartlett" or "Registered Rep"). (The November 19th article also quoted others producing the "3 Nights in August" but these entities are not alleged to be associated with Berthel, Bartlett, or "3 Nights in August".)
17. The November 19th article stated, among other things:
- a. that Bartlett had been hired by the producers of "3 Nights in August" to raise twenty million dollars (\$20,000,000) for the film's production;
 - b. that the production was currently in the money-raising phase;
 - c. the minimum investment per unit;
 - d. that the offering was only for "accredited investors";
 - e. that the investment was a "long shot";
 - f. that Bartlett was interested in enlisting St. Louis investors; and
 - g. the production was seeking state tax credits from the Missouri Film Commission to aid the film's financing.
18. Immediately upon Registered Rep informing Berthel of the November 19th article, Berthel requested that Registered Rep halt any further discussion of "3 Nights in August."
19. The Enforcement Section's subsequent inquiries revealed, among other things, that:
- a. the *STLBJ* initiated the contact with Registered Rep;
 - b. Registered Rep had been under the impression that the article was going to be about the movie in general, rather than its financing;
 - c. others quoted in the November 19th article were not otherwise associated with Registered Rep or Berthel;
 - d. others quoted in the November 19th article had not and would not receive compensation for raising financing for the movie;
 - e. others quoted in the November 19th article were not authorized to speak on behalf of Berthel, Registered Rep, or "3 Nights in August";
 - f. no sales had been made, but Berthel's due diligence department had reviewed the offering and its attempted reliance on Regulation D of the Securities Act of 1933;
 - g. Registered Rep was not under the impression he was going to be quoted when he spoke with the *STLBJ*;
 - h. Registered Rep did not provide the *STLBJ* his picture which appeared in the article-it came from Registered Rep's website-or the quote "Looking for investors willing to spend at least \$50,000 a unit," which appeared under Registered Rep's picture; and
 - i. when he learned what would be printed by the *STLBJ*, Registered Rep notified *STLBJ*'s editor of the possible damage that could be caused by such an article, that the offering was not a public offering, and that printing such an article may cause the "3 Nights in August" to not be made.
20. Once aware of the November 19th article, Berthel immediately began its own investigation of the circumstances surrounding

the article and any potential violation by Registered Rep.

21. After Berthel began its investigation, the Enforcement Section learned:
 - a. Registered Rep, upon Berthel's request, was keeping a log of the inquiries he received from potential investors who had seen the article in the *STLBJ*;
 - b. Registered Rep had, by December 7, 2010, received only two calls from investors regarding the article, and both potential investors were notified that they were disqualified from investing because the offering was unregistered;
 - c. Registered Rep had not met with any investors as of December 7, 2010;
 - d. No subscription documents had been sent out as of December 7, 2010;
 - e. Berthel had sent a letter of caution to Registered Rep in regards to his public discussion in the November 19th article about an attempted private offering; and
 - f. Registered Rep had spoken privately with some personal clients about the offering, but Berthel had essentially "shut the thing down" until this matter is resolved.

II. CONCLUSIONS OF LAW

22. The Commissioner finds Respondent violated Section 409.3-301, RSMo, (Cum. Supp. 2009), when it offered to sell securities in the State of Missouri while those securities were not federally covered securities, not registered under the Act, and were not exempt from the Act's registration requirement.
23. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).

III. ORDER

NOW THEREFORE, it is hereby Ordered that:

1. Respondent shall pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of five thousand dollars (\$5,000). This payment shall be sent within thirty (30) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. The division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund;
2. Before selling the securities to a Missouri resident and until May 19, 2011, the Respondent must require each offeree of the securities offered to sign an acknowledgement before purchase that the offeree did not learn about Respondent's offering as a result of the November 19th article;
3. Until May 19, 2011, the Respondent must refuse to offer or sell to anyone who came to the offering as a result of the November 19th article; and
4. Respondent shall pay its own costs and attorney's fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 25TH DAY OF APRIL, 2011.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:
MISSOURI SECURITIES DIVISION

Patrick T. Morgan
Chief Counsel

BERTHEL FISHER & COMPANY

