

State of Missouri
Office of Secretary of State

Case No. AP-13-10

IN THE MATTER OF:

BERTHEL FISHER & COMPANY FINANCIAL
SERVICES, INC., CRD #13609
and
VERNON K. POGUE, CRD # 1794079

Respondents.

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

Serve: Vernon K. Pogue
2105 Cornerstone Court
Neosho, Missouri 64850

CONSENT ORDER SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State ("Enforcement Section"), through Assistant Commissioner Mary S. Hosmer, has alleged that Berthel Fisher & Company Financial Services, Inc., ("Berthel"), failed to reasonably train Vernon K. Pogue ("Pogue"), a former Missouri-registered agent, and that Pogue sold unsuitable securities to a Missouri resident, and that these activities constitute grounds to revoke, suspend, condition or limit Respondent Berthel's registration and grounds to bar Respondent Pogue pursuant to Section 409.4-412, RSMo. (Cum. Supp. 2011).
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the above activities under Section 409.4-412, RSMo. (Cum. Supp. 2011).

CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities ("Commissioner") has jurisdiction over the Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2011), 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. Respondents waive their rights to a hearing with respect to this matter.
6. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts provided by the Respondents and contained herein prove to be false or materially incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondents 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.
9. Respondents agree 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 or limits in any way Respondents' (a) testimonial obligations; (b) right to take legal or factual positions in defense of arbitration or litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.

10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Enforcement Section, but consent 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

12. Berthel is a Missouri-registered broker-dealer and investment adviser firm based in Marion, Iowa. Berthel is registered in Missouri through the Central Registration Depository ("CRD") with CRD number 13609. Berthel has a main office address of 701 Tama Street, Building B, Marion, Iowa 52302-0609.
13. Vernon K. Pogue was a Missouri-registered broker-dealer agent of Berthel from November 8, 1993, through July 10, 2012, with CRD number 1794079. On July 10, 2012, Pogue voluntarily terminated his employment with Berthel. While at Berthel, Pogue worked out of a Berthel branch office located at 202 South Wood Street, Suite A, Neosho, Missouri 64850. Pogue has a residential address of 2105 Cornerstone Court, Neosho, Missouri 64850.
14. DBSI, Inc., also known as DBSI Housing, Inc. ("DBSI"), was an Idaho corporation that was administratively dissolved in May 2011. DBSI filed for Chapter 11 bankruptcy on November 10, 2008, and has a last known address of 12426 West Explorer Drive, Boise, Idaho 83713.
15. DBSI Cavanaugh III LLC ("DBSI Cavanaugh III") is an Idaho limited liability company that was wholly-owned and managed by DBSI. DBSI Cavanaugh III has an address of 2289 South Bonito Way, Suite 100, Meridian, Idaho 83642. DBSI Cavanaugh III was formed on January 28, 2008, and D. Ryan Minert is listed as the current registered agent.
16. DBSI Securities Corporation ("DBSI Securities") was an Idaho registered corporation with a last known address of 12426 West Explorer Drive, Boise, Idaho 83713. DBSI Securities was organized in July 1979 and was administratively dissolved in October 2011.
17. On February 15, 2008, Berthel entered into a Distribution Agreement with DBSI Securities to offer and sell tenant-in-common interests ("TIC") in a leasehold interest in DBSI Cavanaugh III.
18. In early 2008, Pogue spoke with a seventy-eight (78) year-old Neosho, Missouri resident ("MR1") and MR1's seventy-seven (77) year-old spouse ("MR2") regarding a TIC investment in DBSI Cavanaugh III, a private placement in undeveloped land in Idaho.
19. Prior to this investment, MR1 had been diagnosed with Parkinson's disease. Parkinson's is a progressive, neurodegenerative disease with symptoms that include, among other things, a reduction in the ability for voluntary movement, tremors, and dementia.
20. From September 2011 through December 2012, MR2 and the daughter of MR1 and MR2 spoke to and supplied information to an investigator with the Enforcement Section relating to MR1 and MR2's investment in the DBSI Cavanaugh III. They said that Pogue told MR1 and/or MR2, among other things, the following:
 - a. the DBSI Cavanaugh III was to build strip malls in Idaho;
 - b. there was no risk involved in the investment;
 - c. the DBSI Cavanaugh III TIC would return eight percent (8%) annually; and
 - d. MR1 and MR2 would earn dividends on the investment.
21. On February 20, 2008, MR1 and MR2 signed a subscription agreement on behalf of their trust and purchased a TIC in DBSI Cavanaugh III through Berthel and Pogue.
22. In December 2011, MR1 and MR2 received information regarding DBSI Cavanaugh III alleging, among other things, that:
 - a. DBSI overpaid for the Cavanaugh properties;

- b. DBSI “marked up” properties as much as thirty (30%) percent prior to resale; and
 - c. DBSI sold properties to investors at “highly inflated prices.”
23. On July 26, 2011, Pogue appeared at the Missouri Securities Division for an on-the-record interview by representatives of the Enforcement Section (“Pogue OTR”). At the Pogue OTR, Pogue stated, among other things, the following:
- a. MR1 was retired and MR2 was a housewife;
 - b. Pogue knew that MR1 suffered from Parkinson’s disease;
 - c. MR1 and MR2 had lakefront property that they wanted to sell;
 - d. MR1 and MR2 wanted to put part of the money from the sale of this property into something that was a two to three-year investment;
 - e. DBSI Cavanaugh III TICs were approved by Berthel for its agents to sell;
 - f. Pogue had learned about TICs through annual presentations from TIC wholesalers;
 - g. one advantage of a TIC investment was that an investor could sell real estate and reinvest in other real estate tax-free and the investor would earn income;
 - h. MR1 liked the TIC because “it saved [MR1] the taxes on the sale of [MR1’s] property”;
 - i. Pogue sold the DBSI Cavanaugh III to MR1 and MR2 even though MR1 and MR2 did not receive the tax advantage of the TIC;
 - j. Pogue mislabeled MR1 and MR2’s tenant in common ownership interest in DBSI Cavanaugh III as a “limited partnership” interest; and
 - k. Pogue knew that the property in the DBSI Cavanaugh III was undeveloped land.
24. The property that was the subject of the DBSI Cavanaugh III was expected to be developed in two to three years and would pay off the investors. Berthel failed to reasonably supervise Pogue by failing to train Pogue with respect to selling complex nonconventional products to elderly investors.
25. Pogue failed to reasonably understand the DBSI Cavanaugh III investment before recommending it to MR1 and MR2 including, among other things, the following:
- a. the financial condition of DBSI and its related entities; and
 - b. the risks of the investment.

CONCLUSIONS OF LAW

26. The Commissioner finds Respondent Berthel failed to reasonably train Respondent Pogue, a registered agent in Missouri, who sold unsuitable securities to a Missouri resident and that this conduct constitutes grounds to discipline Respondents under Section 409.4-412, RSMo. (Cum. Supp. 2011).
27. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents 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. 2011).

II. ORDER

NOW THEREFORE, it is hereby ordered that:

1. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from failing to reasonably supervise agents and making unsuitable recommendations in violation of Section 409.4-412, RSMo. (Cum. Supp. 2011).
2. Respondent Berthel’s registration is hereby CENSURED.

3. Respondent Pogue is hereby BARRED from registering as a broker-dealer agent or investment adviser representative in the State of Missouri.
4. Respondent Berthel shall pay seventy-five thousand dollars (\$75,000) to the Missouri resident's trust referenced herein and as identified by the Enforcement Section on Exhibit A. These payments shall be sent within ten (10) 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 Restitution Fund and will be paid by that fund to the investor as identified in Exhibit A.
5. Respondent Berthel shall pay five thousand dollars (\$5,000) to the Missouri Secretary of State's Investor Education and Protection Fund. This payment shall be sent within ten (10) 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.
6. Respondent Berthel will retain, at its expense, an outside consultant ("Consultant") not unacceptable to the Commissioner, no later than three (3) months after the effective date of this Consent Order. Within six (6) months of the effective date of this Consent Order, the Consultant will furnish an initial report to Respondent concerning Respondent's policies and procedures as they relate to Respondent's training of registered representatives relating to the sale of private placements, complex and/or nonconventional products to customers. In addition, the Consultant will make recommendations, if any, to improve Respondent's policies and procedures relating to the training of registered representatives who sell these products. If the Consultant becomes unable to perform its duties, Respondent shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner.
7. Respondent Berthel will submit a follow-up report six (6) months following the submission of the Consultant's report. The follow-up report will discuss the extent to which Respondent has implemented the Consultant's earlier recommendations. Both the Consultant's initial report and Respondent's follow-up report shall remain confidential and the Commissioner shall not release any such reports to any person without Respondent's express authorization.
8. Respondent Berthel will provide to the Enforcement Section copies of all reports prepared by the Consultant. The Enforcement Section 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 Enforcement Section's speaking with the Consultant shall be borne by the Enforcement Section.
9. Respondent Berthel 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.
10. Respondent Berthel will make available upon request by the Enforcement Section 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.
11. For a period of eighteen (18) months following the conclusion of the Consultant's work, Respondent Berthel, its affiliates, and any of its officers may not employ or hire the Consultant in any capacity.
12. Respondents Berthel and Pogue shall pay their 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 FOURTEENTH DAY OF MARCH, 2013.

JASON KANDER
SECRETARY OF STATE

(Signed/Sealed)
ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

Consented to by:
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Berthel Fisher & Company Financial Services, Inc.,

Approved as to Form:

Vincent Louwagie
Attorney for Respondent Berthel

Vernon K. Pogue
Respondent