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BEFORE THE ARIZONA CORPORATION COMMISSION

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2004 MAR 18 P 3:55

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Arizona Corporation Commission

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Commissioner

DOCKETED

MAR 18 2004

MIKE GLEASON

Commissioner

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Mae

In the matter of:

DOCKET NO. S-03539A-03-0000

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A., RESORT
HOLDINGS INTERNATIONAL, INC., d/b/a/
RESORT HOLDINGS INTERNATIONAL,
S.A., WORLD PHANTASY TOURS, INC.,
a/k/a MAJESTY TRAVEL a/k/a VIAJES
MAJESTY, and MICHAEL E. KELLY,

WORLD PHANTASY'S
RENEWED MOTION TO
DISMISS

—AND—

MOTION FOR SANCTIONS

Respondents.

Respondent World Phantasy Tours, Inc. ("World Phantasy") renews its Motion to Dismiss the First Amended Temporary Cease and Desist Order ("Amended Order") issued by the Arizona Corporation Commission ("Commission"). The Amended Order alleges no misconduct on the part of World Phantasy: At most, it says that World Phantasy provided leasing services for individuals who chose to contract with World Phantasy for those services. If providing services creates a basis for liability under the Securities Act, then a company providing photocopying services to RHI may be included as a "respondent" on the same grounds in such a proceeding.

1 issued against World Phantasy. An examination of the “Administrative Orders”
2 referenced during the hearing and provided by the Securities Division at the direction
3 of ALJ Stern shows that none of those “Administrative Orders” even name World
4 Phantasy as a party. *See* Administrative Orders, Tab B. Indeed, only one of seven
5 “Administrative Orders” mentions World Phantasy at all, and then only in the context
6 of quoting the terms of the Universal Lease *Servicing* Agreement. *Id.* at ACC006750.
7 If anything, the conspicuous absence of World Phantasy from these orders supports
8 World Phantasy’s position that it simply does not belong in these proceedings. To add
9 further insult to injury, not one of the “Administrative Orders” resulted from hearings,
10 none made findings of fact, and none finally determined that any violation of securities
11 laws occurred. *Id.* These blatant misrepresentations to the administrative tribunal
12 represent only the latest episode in a continuing pattern and practice of making vague
13 and non-specific allegations in the hopes that the mud will stick long enough to keep
14 World Phantasy in the proceedings.

15 **2. The Securities Division Relies Entirely on Unsupported, Non-specific**
16 **Accusations Against World Phantasy**

17 **2.1. The Securities Division’s Response Identifies No Facts Supporting**
18 **Its Allegations of Misconduct**

19 The Securities Division’s Response to World Phantasy’s Motion to Dismiss
20 (“Response”) presents nothing other than classic examples of unsupported accusations
21 which—even if they were relevant to a motion directed to the sufficiency of their
22 pleadings—should be disregarded for the reasons so thoroughly discussed in World
23 Phantasy’s motion to dismiss. The Securities Division even makes allegations against
24 World Phantasy in its Response that were not present in the original Order and are
25 likewise not present in the Amended Order. The Securities Division alleges that
26 World Phantasy “is responsible for remitting the 9 to 11 percent rate of return percent
[sic] directly back to the Universal Lease investors.” Response, p. 3. Is the Securities

1 Division alleging that World Phantasy *pays or agreed to pay* “the 9 to 11 percent rate
2 of return” to Universal Lease investors? Or does the Securities Division simply mean
3 that timeshare owners can only generate income from their timeshare units by leasing
4 them to others?

5 Similarly, the only allegation of actual conduct by World Phantasy is contained
6 in the Securities Division’s Response, and not in the Amended Order. The Securities
7 Division alleges that World Phantasy “promotes its managerial abilities in connection
8 with the purported timeshare units, it contracts with investors, and it offers investment
9 returns to investors participating in the Universal Lease Program.” Response, p. 7.
10 Setting aside for a moment the obvious—that promoting managerial abilities and
11 contracting with people who also happen to be putative “investors” are not unlawful
12 activities—the bare allegation that World Phantasy “offers investment returns to
13 investors participating in the Universal Lease Program” is insufficient to support a
14 claim for violations of Arizona’s securities laws when unaccompanied by allegations
15 of facts explicating the nature of that conduct. In short, the Securities Division has not
16 alleged how World Phantasy, directly or indirectly, participated in anything.

17 **2.2. The Amended Order Alleges No Misconduct as to World Phantasy**

18 Even in the Amended Order itself, the Securities Division alleges no conduct on
19 the part of World Phantasy that can remotely be construed as violations of Arizona’s
20 Securities Laws:

- 21 • “[t]he Universal Lease Program is uniformly bundled with a [World Phantasy]
22 ‘management agreement’ and . . . investors are only ‘guaranteed’ a return on
23 their investments if they execute a contract with [World Phantasy]”
24 Response, p. 4. The Securities Division makes no allegation that World
25 Phantasy, directly or indirectly, did the bundling or guaranteeing.
26

- 1 • World Phantasy “documents were a standard component to the Universal Lease
2 application, and only by entering into a contractual relationship with [World
3 Phantasy] would investors be entitled to a guaranteed rate of return on their
4 investments.” Response, p. 6. The Securities Division does not allege that
5 World Phantasy, directly or indirectly, provided the Universal Lease application
6 to investors or made any representations, directly or indirectly, to anyone
7 regarding investment returns.
- 8 • World Phantasy “was the cornerstone for enticing the participation of investors
9 in the Universal Lease Program.” Response, at 6. The Securities Division does
10 not allege that World Phantasy, directly or indirectly, enticed anyone.
- 11 • “[T]he simple fact that material misstatements or material omissions were made
12 in connection with the offer or sale of securities will suffice in establishing
13 fraud under A.R.S. § 44-1991.” Response, p. 6. The Securities Division never
14 alleges that World Phantasy made any misstatements or material omissions,
15 directly or indirectly, to anyone.

16 Even accepting, for the sake of argument, that inclusion of World Phantasy in
17 the generic term “Respondents” qualifies as making specific factual allegations, a
18 careful examination of the general allegations of the Amended Order reveals that the
19 term “Respondents” is used exclusively as a possessive adjective (i.e. “Respondents’
20 sales strategy,” “Respondents’ Universal Lease Program,” “Respondents’ promotional
21 materials,” Respondents’ Universal Lease sales agents”)—with only one exception. In
22 paragraph 32, the Securities Division alleges that: “RESPONDENTS fail to disclose
23 any financial relationship with World Phantasy or indicate whether either company is
24 entitled to receive a percentage of this servicing agent’s management fees.” This is the
25 only instance in which specific conduct is alleged against “Respondents,” as opposed
26 to particular named parties. But in this case, World Phantasy is clearly excluded from

1 the definition of the term “Respondents.” Why would World Phantasy be required to
2 disclose a financial relationship with itself, or disclose that it receives fees in exchange
3 for its leasing services?

4 The Securities Division never alleges that World Phantasy sold or offered for
5 sale a security or investment contract; made any material misstatements or omissions;
6 engaged in a transaction that operates or would operate as a fraud or deceit; or
7 employed any device scheme, or artifice to defraud anyone. If contracting to provide
8 leasing services qualifies as conduct sufficient to state a claim under Arizona’s
9 securities laws, perhaps we can next expect to see the Securities Division seek to add
10 individuals or entities providing maid services on the theory that promoting cleaning
11 abilities and contracting with investors to provide cleaning services constitutes
12 “indirect participation in a fraudulent act.” The inescapable conclusion is that the
13 Securities Division expects to indefinitely subject World Phantasy to the Amended
14 Temporary Cease and Desist Order—an order that is rapidly becoming anything but
15 temporary—based solely on the allegation that it provided leasing services to some
16 people who entered into a Universal Lease Agreement with other parties.

17 **3. Conclusion**

18 The Securities Division has yet to make a single factual allegation against
19 World Phantasy that supports its claims of violations of Arizona’s securities laws.
20 And when pressed for specific facts and evidence, the Securities Division resorts to
21 misrepresenting “evidence” as implicating World Phantasy. After more than seven
22 months of continued “investigations” and administrative proceedings, World Phantasy
23 is no closer to learning what it has supposedly done wrong. As a matter of fairness—
24 particularly since World Phantasy’s motion goes entirely to the sufficiency of the
25 Securities Division’s pleadings—World Phantasy is entitled to have its motion
26 considered on the merits in a timely fashion. And in light of misrepresentations made

1 to the administrative tribunal during the March 4, 2004 Pre-hearing Conference, the
2 tribunal should examine World Phantasy's motion on the merits as a (mild) sanction
3 for making those misrepresentations.

4 RESPECTFULLY SUBMITTED this 18th day of March, 2004.

5 MEYER, HENDRICKS & BIVENS, P.A.

6
7 By 
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12 ORIGINAL and thirteen copies of the foregoing
13 hand-delivered this 18th day of March, 2004 to:

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18 this 18th day of March, 2004 to:

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