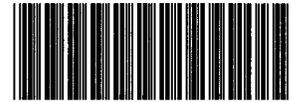


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BEFORE THE ARIZONA CORPORATION COMMISSION

28

1
2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 **In the matter of:**

9 **YUCATAN RESORTS, INC.,**
10 3222 Mishawaka Avenue.
11 South Bend, IN 46615;
12 P.O. Box 2661
13 South Bend, IN 46680;
14 Av. Coba #82 Lote 10, 3er. Piso
15 Cancun, Q. Roo
16 Mexico C.P. 77500

17 **YUCATAN RESORTS, S.A.,**
18 3222 Mishawaka Avenue.
19 South Bend, IN 46615;
20 P.O. Box 2661
21 South Bend, IN 46680;
22 Av. Coba #82 Lote 10, 3er. Piso
23 Cancun, Q. Roo
24 Mexico C.P. 77500

25 **RESORT HOLDINGS INTERNATIONAL,**
26 **INC.,**
3222 Mishawaka Avenue
South Bend, IN 46615;
P.O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
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S.A.,
3222 Mishawaka Avenue
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Mexico C.P. 77500

DOCKET NO. S-03539A-03-0000

SECURITIES DIVISION'S RESPONSE
TO RESPONDENT WORLD PHANTASY
TOURS INC.'S RENEWED MOTION
TO DISMISS AND MOTION FOR
SANCTIONS

AZ CORP COMMISSION
DOCUMENT CONTROL

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1 **WORLD PHANTASY TOURS, INC.,**)
 a/k/a **MAJESTY TRAVEL**)
 2 a/k/a **VIAJES MAJESTY**)
 Calle Eusebio A. Morales)
 3 Edificio Atlantida, P Baja)
 APDO, 8301 Zona 7 Panama,)
 4)
AVALON RESORTS, S.A.)
 5 Av. Coba #82 Lote 10, 3er. Piso)
 Cancun, Q. Roo)
 6 Mexico C.P. 77500)
)
 7 **MICHAEL E. KELLY and LORY KELLY,**)
 husband and wife,)
 8 29294 Quinn Road)
 North Liberty, IN 46554;)
 9 3222 Mishawaka Avenue)
 South Bend, IN 46615;)
 10 P.O. Box 2661)
 South Bend, IN 46680,)
 11)
 Respondents.)
 12)

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The Securities Division of the Arizona Corporation Commission (“Division”) hereby responds to the Renewed Motion to Dismiss and Motion for Sanctions (“Motion”) filed by respondent World Phantasy Tours, Inc. (“Phantasy”). Simply stated, this Motion is a particularly frivolous attempt at distorting and inventing issues for the Division and the administrative judge in this matter to address. In light of this, the Division would ask that the administrative law judge/Commission impose, pursuant to A.R.S. § 44-2038 and A.A.C. R14-3-104(F)(4), appropriate monetary sanctions on Phantasy for recklessly harassing the Division and, in so doing, causing unnecessary delay and expense.

Discussion

In its Motion, Phantasy cobbles together rehashed arguments for dismissal together with a distorted reading of a March 4, 2004 pre-hearing conference transcript to reach the conclusion that Phantasy should be dismissed from this administrative action. The lack of merit in this argument is both obvious and disappointing.

1
2 **I. A Division Statement Made at the Last Pre-Hearing Conference Does Not**
3 **Support Phantasy's Request for Dismissal from this Administrative Action**

4 Phantasy makes the remarkable claim that because the Division made a purportedly
5 "misleading" statement during the most recent pre-hearing conference in this matter, Phantasy
6 deserves an immediate dismissal from this action. This dismissal demand is absurd on its face.
7 More troubling, however, is the fact that Phantasy presents this "misleading" Division statement by
8 omitting its central opening phrase. In so doing, Phantasy purposefully conceals the context in
9 which the statement was made, thereby enabling Phantasy to advance to this Court both an
10 inappropriate reading and disingenuous interpretation.

11 ***The cited Division statement was not misleading***

12 Phantasy initially argues that, by citing the fact that other securities divisions had issued
13 orders "against the Respondents," the Division had actually "misled the tribunal" by implying that
14 each prior order was directed against *every respondent*. This particular interpretation is, of course, an
15 expedient deviation from a more logical reading of the Division statement that multiple of the current
16 respondents were named as respondents in one or more of the prior administrative orders.¹ Phantasy
17 nevertheless relies on this weak leap in semantics as primary support for its demand for dismissal
18 and sanctions.

19 Phantasy's trifling attack on the Division's characterization of these prior administrative
20 orders is particularly hollow in light of the fact that these orders do - and will - speak for themselves
21 at trial. Indeed, these prior administrative orders will ultimately serve to make a critical point: that
22 because respondents to this case were repeatedly targeted for securities violations in multiple
23 jurisdictions for similar universal lease (and promissory note) activities, Respondents should not be
24 surprised by the jurisdiction of the Arizona Corporation Commission in this matter.

25 _____
26 ¹ For the Division to represent that *each and every* Respondent was named in *each and every* prior order,
the Division's statement would necessarily require the following additional adjectives: "[all] eight
securities divisions have issued rulings against [all] the respondents. This claim was not made.

In its proper context, the statement at issue made by the Division was at once salient, accurate and appropriate

1
2 Even while insisting that the Division misrepresented evidence to the administrative tribunal
3 during a March 4, 2004 pre-hearing conference, Phantasy sees fit to edit out the contextual
4 underpinning of this Division statement. Phantasy's dubious assault on the Division statement is
5 further undermined when a measure of context is introduced.

6 In the pre-hearing transcript passage at issue, the Division stated "**Touching on the**
7 **comment that this matter belongs in the Department of Real Estate**, there had (*sic*) been at least
8 eight and probably more securities divisions across the country that have issued rulings against the
9 respondents in this case. Clearly, they have found [the respondents' investment programs] to be a
10 security."² (Emphasis Added). *Pre-hearing transcript, March 4, 2004, p.24, lines 8-12*. It is evident
11 from the *full* statement that the Division, by defending against a prior charge that this matter
12 belonged in the Arizona Department of Real Estate, was merely pointing out that at least eight other
13 states had already considered and concluded that the actions of respondents fell within the oversight
14 of state securities regulators.

15 In this context, the statement was at once accurate, germane and appropriate; the Division
16 responded to respondents' challenge that this matter did not belong in this securities forum, and the
17 Division cited outside precedent to support its rebuttal. The administrative law judge was
18 consequently not presented with misleading evidence but, to the contrary, was apprised of relevant
19 information calling for further examination and review.

The prior securities division orders do not serve to exonerate Phantasy

21 In its Motion, Phantasy also cites the "conspicuous absence" of references to Phantasy in the
22 bulk of the prior securities division orders, apparently suggesting that this, in and of itself, constitutes
23 compelling evidence for Phantasy's dismissal. This conclusion is nonsense. During the pre-hearing
24 conference on March 4, 2004, the prior securities division orders were simply referenced to refute a
25

26 ² In its Motion, Phantasy deletes the emphasized portion of the Division statement.

1 claim that the Department of Real Estate was the appropriate forum for this case. These orders were
2 *not* cited for the purpose of providing definitive proof that the respondents to this action were in
3 violation of the Arizona Securities Act; likewise, the fact that one of the respondents to this action
4 was not named or referenced in a particular securities division order provides no meaningful
5 indication that this particular individual or entity was *not* in violations of the Securities Act of
6 Arizona.

7 ***The prior administrative orders speak for themselves***

8 With respect to the prior securities division orders, Phantasy ultimately assails their probative
9 value. Phantasy complains that “not one” of these prior administrative orders made any factual
10 findings or “finally” determined whether any securities violations occurred. This disingenuous
11 assertion rests on the simple fact that these Orders were routinely resolved through consents, making
12 any “final” determinations unnecessary. Playing cynical games with the resolution of these
13 administrative orders does not change the import of these documents.

14 Moreover, the administrative orders issued against respondents to this case *do* in fact outline
15 a pattern of repeated securities violations by multiple of the respondents, including: 1) a Minnesota
16 Consent Cease and Desist order against respondents Resort Holdings International, Inc., and Resort
17 Holdings International, S.A. and a sales agent for selling unregistered securities in the form of
18 investment contracts in vacation property management programs associated with leases; 2) a
19 Pennsylvania Summary Order to Cease and Desist barring a local sales agent and respondent
20 Yucatan Resorts, S.A. from selling unregistered securities in the form of the Yucatan program; 3) a
21 New Mexico cease and desist order against respondent Michael E. Kelly, (“Kelly”) for offering or
22 selling securities in the form of unregistered promissory notes issued by Yucatan Investment
23 Corporation; 4) a South Carolina Administrative Consent Order with respondent Kelly that Yucatan
24 Investment Corporation will cease and discontinue the sale of unregistered securities.

25 Other securities actions also provided respondents with knowledge that their program was
26 considered a security by state regulators, including: 1) an Order initiating an investigation against

1 Yucatan Resorts for the sale of unregistered securities by the Oklahoma Department of Securities; 2)
2 a Kansas Consent Order against an authorized agent of respondent Resort Holdings International that
3 had been selling Universal Leases issued by Resort Holdings International; 3) a Wisconsin Order of
4 Prohibition against Yucatan Resorts, S.A. de C.V. in connection with its sale of the Yucatan
5 Universal Lease program.

6 These administrative orders are naturally helpful in highlighting the fact that respondents to
7 the present action, along with their Universal Lease program, have been deemed on repeated
8 occasion to have run afoul of securities statutes throughout the United States. It should be noted that
9 the respondents have never convinced a single of these securities divisions that their "product," i.e.
10 the Universal Lease or nine month note, did not constitute an investment contract/security.

11 **II. The Division Has Already Refuted Phantasy's Rationale for Dismissal**

12 As a second argument for dismissal, Phantasy submits what is effectively a six-month-late
13 "reply" to the Division's response to Phantasy's original Motion to Dismiss (filed on August 8,
14 2003). As has already been determined by the administrative law judge assigned to this matter, a
15 ruling on Phantasy's Motion to Dismiss can only be made after an evidentiary hearing is held on this
16 matter. As a consequence, Phantasy had effectively sought to levy arguments already refuted by the
17 Division and already considered by the Court. Clearly there are more constructive ways for the
18 Division to expend its limited resources than to respond to such filings.

19 At the risk of giving any credence to an entirely inappropriate submission, Phantasy argues
20 that its dismissal from this matter is still warranted because Phantasy is not alleged to have
21 "conducted" any illicit activities. Quite simply, this claim falls flat from both a factual and legal
22 standpoint. As the Division addressed both in its "Amended Temporary Order to Cease and Desist"
23 and in its Response to Phantasy's initial Motion to Dismiss (hereby incorporated by reference),
24 Phantasy played an integral role in the Universal Lease program. Whether this entity was providing
25 and entering into contracts with investors as the investors' "independent" leasing agent, providing
26 investors with their quarterly returns on their investments in the alleged form of "leasing profits," or

1 (purportedly) acting as the servicing agent for the investors' Universal Lease timeshare units,
2 Phantasy was a key component to both the promotion and operation of the entire Universal Lease
3 program.

4 Based on elemental principles of securities law, Phantasy was a direct or indirect participant
5 in all facets of Universal Lease scheme. Unlike Phantasy's example of a maid or maid service, who
6 neither contracts directly with investors to service their Universal Leases nor disburses purported
7 investment proceeds to investors, Phantasy was a necessary and indispensable party to the
8 "successful" operations of the Universal Lease program. The evidence educed at trial will
9 emphatically demonstrate this fact.

10 **CONCLUSION**

11 The audacity of Phantasy's Motion is striking. Knowing that this Court has already
12 determined that it would be inappropriate to consider any of respondents' motions to dismiss until
13 after an evidentiary hearing, Phantasy takes a cynical, contextually devoid interpretation of a single
14 statement made by the Division during a pre-hearing conference to demand that this Court "sanction"
15 the Division by reconsidering its August 2003 Motion to Dismiss and dismissing Phantasy from this
16 action. Simply put, the Court has already spoken on the issue of dismissal, the allegation of a
17 Division "misrepresentation" was spurious, and Phantasy's Motion to Dismiss was already soundly
18 rebuffed in 2003. Moreover, a "sanction" is a form of punishment; Phantasy's release from these
19 proceedings would not deliver punishment to the Division but rather to the hundreds of elderly
20 Arizona investors caught up in this program.

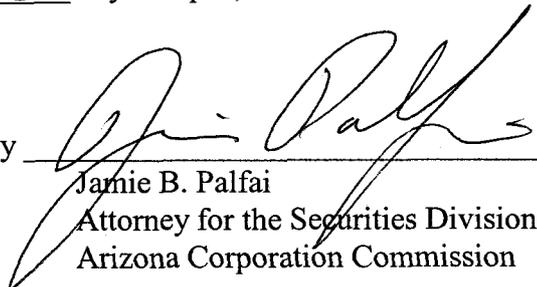
21 Because this Motion is frivolous, vexing and baseless, the Division asks that the
22 Commission, pursuant to the authority provided through both the Arizona Administrative Code and
23 Arizona Revised Statutes,³ award the Division its reasonable attorneys' fees incurred in connection
24
25

26 ³ See A.R.S. § 44-2038 and Arizona Administrative Code Rule R14-3-104(F)(4).

1 with its defense of the Motion in an amount no less than \$1,000. The Division also requests that
2 Phantasy's Motion be denied in full.

3 RESPECTFULLY SUBMITTED this 23 day of April, 2004.

4
5 By


6 Jamie B. Palfai

7 Attorney for the Securities Division of the
8 Arizona Corporation Commission
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15 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
16 filed this 23 day of April, 2004, with

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18 Arizona Corporation Commission
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20 Phoenix, AZ 85007

21 COPY of the foregoing hand-delivered this
22 23 day of April, 2004, to:

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24 Hearing Officer
25 Arizona Corporation Commission/Hearing Division
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