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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF:

DOCKET NO. S-03539A-03-0000

YUCATAN RESORTS, INC., dba
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
Mexico C.P. 77500

YUCATAN RESORTS, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
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South Bend, IN 46680
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RESORT HOLDINGS INTERNATIONAL, INC.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P.O. Box 2661
South Bend, IN 46680
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WORLD PHANTASY TOURS, INC., aka
MAJESTY TRAVEL, aka VIAJES MAJESTY
Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama

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Arizona Corporation Commission
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JUL 30 2004

DOCKETED BY

1 AVALON RESORTS, S.A.
2 Avenida Coba #82 Lote 10, 3er. Piso
3 Cancun, Q. Roo
4 Mexico, C.P. 77500

5 MICHAEL E. KELLY and LORI KELLY,
6 Husband and wife,
7 29294 Quinn Road
8 North Liberty, IN 46554;
9 3222 Mishawaka Avenue
10 South Bend, IN 46615;
11 P.O. Box 2661
12 South Bend, IN 46680

13 Respondents.

EIGHTH
PROCEDURAL ORDER

14 **BY THE COMMISSION:**

15 On May 20, 2003, the Securities Division ("Division") of the Arizona Corporation
16 Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of
17 Opportunity for Hearing ("Notice") against Yucatan Resorts, Inc. dba Yucatan Resorts, S.A.,
18 ("Yucatan"), Resort Holdings International, Inc. dba Resort Holdings International, S.A. ("RHI"),
19 World Phantasy Tours, aka Majesty Travel, aka Viajes Majesty ("WPT") and Michael E. Kelly and
20 Lori Kelly ("Kelly") (collectively the "Respondents") in which the Division alleged multiple
21 violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in
22 the form of investment contracts.

23 Respondents Yucatan, RHI, Kelly and WPT were duly served with copies of the notice.

24 On June 10, 2003, Respondents Yucatan, RHI and Kelly filed requests for hearing.

25 On June 23, 2003, Respondents, Yucatan, RHI and Kelly filed multiple Motions to Dismiss
26 also claiming lack of personal jurisdiction and insufficiency of service of process. Yucatan, RHI and
27 Kelly also filed Answers to the TO and Notice.

28 On June 25, 2003, by Procedural Order, a pre-hearing conference was scheduled on July 10,
2003.

On July 1, 2003, counsel for Respondents Yucatan and RHI filed a Motion and Consent for
Admission Pro Hac Vice ("Motion PHV") for attorneys Joel Held and Elizabeth Yingling. The
Motion PHV was accompanied by evidence that attorneys Held and Yingling had complied with Rule

1 33 of the Rules of the Arizona Supreme Court and paid the required filing fees.

2 On July 3, 2003, counsel for the Division, Yucatan, RHI and Kelly filed a stipulation to
3 reschedule the pre-hearing conference from July 10, 2003 to July 17, 2003. The parties also agreed
4 to extend by two days, from July 8, 2003 to July 10, 2003, the date for filing the Division's
5 Responses to Respondents' Motions to Dismiss.

6 On July 8, 2003, by Procedural Order, the pre-hearing conference was continued to July 17,
7 2003 and the Motion PHV was granted.

8 On July 11, 2003, the Division filed Responses to the pending Motions to Dismiss.

9 On July 17, 2003, a pre-hearing conference was held with counsel for the Division, Yucatan,
10 RHI and Kelly present. Procedural and discovery matters were discussed. It was decided that an
11 additional pre-hearing would be scheduled after the various pleadings were filed.

12 On July 30, 2003, Replies of Yucatan, RHI and Mr. Kelly were filed to the Division's
13 Responses. Mrs. Kelly did not file a Reply.

14 On August 8, 2003, WPT filed a request for hearing and a Motion to Dismiss and Answer to
15 the TO and Notice.

16 On August 8, 2003, the Division filed a Motion to Amend the TO and Notice to add an
17 additional Respondent, Avalon Resorts, S.A. ("Avalon") to the proceeding.

18 On August 13, 2003, the Division filed its Response to WPT's Motion to Dismiss. WPT did
19 not file a Reply.

20 On August 25, 2003, Yucatan and RHI filed a Response to the Division's Motion to Amend
21 the TO and Notice to add Avalon to the proceeding.

22 On September 4, 2003, Yucatan and RHI filed what was captioned "Motion to Quash
23 Subpoenas, Objection to Subpoenas and Motion to Stay Discovery Pending Further Order" ("Motion
24 to Quash") with respect to four subpoenas which involve ongoing to investigations being conducted
25 by the Division. Yucatan and RHI argued that the individuals involved could possibly be witnesses
26 in this proceeding and pursuant to the Arizona Rules of Civil Procedure ("ARCP"), the Respondents
27 were entitled to notice and to attend and participate in the formal interviews under oath of the
28 individuals who were subpoenaed.

1 On September 12, 2003, by Procedural Order, the Motions to Dismiss were taken under
2 advisement and the Division's Motion to Amend TO and Notice was granted, and a pre-hearing
3 conference scheduled for October 8, 2003.

4 On September 18, 2003, the Division filed its Response to Yucatan's and RHI's Motion to
5 Quash arguing that the Respondents did not have standing to object to the Division's investigation of
6 these individuals and that its investigative powers were not restricted as argued by the Respondents in
7 the Motion to Quash.

8 On September 26, 2003, the parties filed a joint stipulation that the pre-hearing conference be
9 rescheduled from October 8, 2003 to October 7, 2003, at 10:00 a.m. Additionally, on September 26,
10 2003, Yucatan and RHI filed a Supplemental Motion to Quash with respect to subpoena issued to
11 Wells Fargo Bank for financial records regarding individuals or entities described in the initial
12 Motion to Quash filed by Yucatan and RHI.

13 On September 29, 2003, by Procedural Order, the pre-hearing conference scheduled for
14 October 8, 2003, was rescheduled to October 7, 2003,.

15 On September 30, 2003, Yucatan and RHI filed a Reply to the Division's Response arguing
16 that the Division should have conducted its investigation before the issuance of its TO and Notice
17 herein.

18 On October 6, 2003, the Division filed its response to the Supplemental Motion to Quash in
19 which the Division reargued its objections to either Yucatan or RHI having standing to object to the
20 Division's subpoenas citing further A.R.S. § 44-1823(A) and also raising the issue whether counsel
21 for Yucatan and RHI who is appearing Pro Hac Vice could represent any other parties or individuals
22 not named in the instant proceeding.

23 On October 7, 2003, at the pre-hearing conference, counsel for the respective parties to the
24 proceeding appeared. Various discovery issues were addressed and the parties agreed to attempt to
25 resolve these issues without an order from the presiding Administrative Law Judge. The parties
26 further agreed upon another pre-hearing conference being scheduled for November 12, 2003.

27 On November 12, 2003, at the pre-hearing conference, counsel for the Division, Yucatan,
28 RHI, WPT and Mr. and Mrs. Kelly were present. Counsel for Yucatan and RHI who is appearing Pro

1 Hac Vice indicated that he would not be representing the individuals on whose behalf he had earlier
2 filed the Motion to Quash and the Supplemental Motion to Quash. There was also a brief discussion
3 with respect to the fact that Mrs. Kelly, who had been joined in the proceeding pursuant to A.R.S. §
4 44-2031(C), had not been properly served in the proceeding. With respect to discovery issues,
5 although the parties have in good faith attempted to resolve their differences, it remained for a
6 resolution to be had. It was decided that all parties to the proceeding would be entitled to the
7 following: notice of formal interviews of witnesses by the Division with respect to this proceeding;
8 cross-notice to the Division of depositions of these witnesses by the Respondents; the right of counsel
9 for the Respondents in this proceeding to attend these formal interviews; and the right of
10 Respondents' counsel to purchase a copy of that portion of any transcript relevant to this proceeding
11 involving the aforementioned witnesses, but no other portion with respect to other investigations.
12 Respondents' counsel would not have the right to either question witnesses nor object to improper
13 questions and/or answers during the Division's formal interviews. The parties further agreed to an
14 additional pre-hearing being scheduled on January 14, 2004, at 2:00 p.m.

15 On November 21, 2003, by Procedural Order, the Motion to Quash and Supplemental Motion
16 to Quash were denied. The portion of the proceeding with respect to Mrs. Kelly was dismissed
17 without prejudice until such time it is established that proper service has been made by the Division.
18 The Division and the Respondents were ordered to follow the procedure outlined above with respect
19 to formal interviews, their notice, attendance and conduct.

20 On January 14, 2004, at the pre-hearing conference, counsel for the Division, Yucatan, RHI,
21 WPT and Mr. Kelly appeared. The status of discovery in the proceeding was discussed and it was
22 agreed that a pre-hearing conference be scheduled during the first week in March, 2004 prior to a
23 hearing being scheduled.

24 On January 15, 2004, by Procedural Order, an additional pre-hearing conference was
25 scheduled for March 4, 2004.

26 On March 4, 2004, at the pre-hearing conference, counsel for the Division, Yucatan, RHI,
27 WPT and Mr. Kelly appeared. Counsel for the Division disclosed that he believed the evidence in the
28 proceeding would establish that a Ponzi scheme developed during the course of the alleged offering.

1 In response to Respondents' arguments that the proceeding should be before the Arizona Department
2 of Real Estate rather than the Commission, counsel for the Division pointed out that a number of
3 jurisdictions had taken administrative action similar to that by the Division for securities violations,
4 and that the Division had copies of the "rulings" from these jurisdictions. Following some
5 discussion, the Division was directed to provide copies of the "rulings" to the Respondents. The
6 Division further argued that the discovery rules pursuant to the ARCP do not apply because a
7 provision of A.A.C. R14-3-101(A) states in part as follows:

8
9 . . . notwithstanding any of the above, neither these rules nor the Rules of
10 Civil Procedure shall apply to any investigation by the Commission, any
11 of its divisions or its staff.

12 In this instance, the Division pointed out that since this proceeding involves an ongoing investigation
13 of the Respondents, the filing of the T.O. and Notice do not terminate the investigation. During the
14 pre-hearing conference, it was further discussed that the parties would have ten business days to file
15 responses and would have five business days to file replies with five additional days for delivery.

16 On March 5, 2004, due to ongoing discovery disputes between the Division and Respondents,
17 the Division filed separate responses/objections to the following: First Set of Non-Uniform
18 Interrogatories and Request for Production of Documents filed by Yucatan and RHI; the First
19 Request for Production of Documents filed by WPT; and the First Request for Production of
20 Documents filed by Mr. Kelly. In response to the Respondents' requests for discovery pursuant to
21 the ARCP, the Division argued that they were outside of the limits authorized for administrative
22 proceedings pursuant to the Arizona Revised Statutes and the Rules of Practice and Procedure before
23 the Commission. The Division cited a series of cases which stood for the principle that the civil rules
24 for discovery do not apply in administrative proceedings. Specifically, the Division cited A.R.S. §
25 41-1062(A)(4) which states, ". . . no subpoenas, depositions or other discovery shall be permitted in
26 contested cases except as provided by agency rule or this paragraph." Further supporting the
27 Division's position that the Respondents would not be denied due process if the ARCP were not
28 followed in an administrative proceeding, the Division cited a Texas appellate court case, *Huntsville
Mem. Hospital v. Ernst*, 763 S.W. 2d 856, 859 (Tex. App. 1988). This case found that due process in

1 an administrative proceeding requires notice, a hearing and an impartial trier of fact, but does not
2 require the use of discovery as in a civil court proceeding.

3 On March 18, 2004, Respondents Yucatan, RHI, WPT and Kelly filed what was captioned,
4 "Respondents' Joint Motion to Compel or, Alternatively, to Vacate the Temporary Order to Cease
5 and Desist" ("Joint Motion to Compel/Vacate") and "Respondents' Joint Motion for Sanctions". In
6 addition, WPT filed what was captioned "Renewed Motion to Dismiss and Motion for Sanctions"
7 ("Renewed Motion"). In the Joint Motion to Compel/Vacate, the Respondents argued that the
8 Division was engaging in a form of litigation by ambush and requested that if the Division was not
9 compelled to respond to the Respondents' requests for discovery then, in the alternative, the T.O.
10 should be vacated. The Respondents argued that the Division was bound by another provision of
11 A.A.C. R14-3-101(A) which states in part as follows:

12
13 *In all cases in which procedure is set forth neither by law, nor by these*
14 *rules, nor by regulations or orders of the Commission, the Rules of Civil*
15 *Procedure for the Superior Court of Arizona as established by the*
16 *Supreme Court of the State of Arizona shall govern.*

17 In their Joint Motion for Sanctions, Respondents argued that certain of the statements made
18 by the Division's counsel at the pre-hearing conference on March 4, 2004, tainted the proceedings
19 when certain representations were made concerning proceedings in other jurisdictions which had
20 resulted in "rulings against Respondents", and purportedly did not relate to any named Respondents
21 herein. The Respondents argued that the Division should be sanctioned by an Order precluding the
22 use of any other orders from other jurisdictions as exhibits in this proceeding and that the Division's
23 counsel be admonished and prohibited from making any statements in the proceeding which are not
24 true and prejudice the Respondents.

25 WPT in its Renewed Motion argues that the Division had made vague and unsupported
26 accusations against WPT in the allegations contained in the Notice and there was no allegation that
27 WPT had directly or indirectly had been involved in any sales activities or made any
28 misrepresentations to any investors.

On April 2, 2004, the Division filed what was captioned, "Securities Division's Response to
Respondents' Joint Motion for Sanctions" arguing that the Division did not misrepresent the nature of

1 other actions taken in other jurisdictions with respect to proceedings which have been initiated by the
2 equivalent of the Division in those jurisdictions. The Division argued that its representations about
3 actions in other jurisdictions had been made primarily to counter the claim by the Respondents that
4 action should not be brought by the Division, but by the Arizona Department of Real Estate.

5 On April 2, 2004, the Division also filed what it captioned, "Securities Division's Response to
6 Respondent World Phantasy Tours, Inc.'s Renewed Motion to Dismiss and Motion for Sanctions"
7 arguing that WPT failed to consider statements made by the Division's counsel at the March 4, 2004,
8 pre-hearing conference in their entirety when renewing its claim that it should be dismissed from the
9 proceeding herein after having been previously advised that its Motion for Dismissal would be taken
10 under advisement pending an evidentiary hearing. The Division also claimed that it was entitled to
11 sanctions for attorney's fees in connection with its response to WPT's Renewed Motion.

12 On April 5, 2004, the Division filed what was captioned, "Securities Division's Response
13 [Effectively Reply] to Respondents' Joint Motion to Compel or, Alternatively, to Vacate the
14 Temporary Order to Cease and Desist" ("Division Response/Reply"). Although captioned a
15 response, this filing constitutes a reply to the Respondents' Joint Motion to Compel/Vacate which
16 amounted to be a response by Respondents to the objections, termed a "response" by the Division in
17 its March 5, 2004 filings, to the Respondents' multiple requests for discovery from the Division. The
18 Division stated that the Respondents' position was not supported by any authority contrary to the
19 Division's earlier filing which cited treatises, state and federal case law, administrative rules and the
20 Arizona Administrative Procedures Act to support its position opposing discovery pursuant to the
21 ARCP in an administrative proceeding. As was pointed out in cases cited by the Division, the
22 Respondents are provided due process in an administrative proceeding provided they have received
23 notice and have an opportunity for a hearing before an impartial trier of fact.

24 On April 7, 2004, the Respondents advised the presiding Administrative Law Judge by fax
25 that they intended to file a reply by April 12, 2004, to the Division's filing of April 5, 2004.

26 On April 12, 2004, the Respondents filed the following: "Respondents' Joint Reply in
27 Support of Joint Motion for Sanctions" ("Joint Reply for Sanctions"); "Respondents' Joint Motion to
28 Strike the Securities Division's Reply to Respondents' Joint Motion to Compel or, Alternatively,

1 Vacate the Temporary Order to Cease and Desist” (“Joint Motion to Strike”); and “WPT’s Reply in
2 Support of its Renewed Motion to Dismiss and Motion for Sanctions and Response to the Division’s
3 Request for Sanctions” (“Reply in Support”).

4 In their Joint Reply for Sanctions, Respondents restated their arguments made previously with
5 respect the Division’s representations at the March 4, 2004 pre-hearing conference concerning
6 “rulings” against the Respondents. The Respondents argued that the Division’s statement was
7 inaccurate and that the Division should be subject to sanctions. The Respondents reiterated that the
8 Division should be prohibited from the use or reference to these jurisdictions’ proceedings outside of
9 Arizona that involved securities actions against what possibly appear to be some of the Respondents
10 herein. The Respondents also requested that the Division be sanctioned and ordered to pay the
11 Respondents the reasonable expenses of their joint pleadings. The Respondents’ Joint Motion to
12 Strike the Division’s Response/Reply filed on April 5, 2004 took issue with the timeliness of the
13 Division’s Response/Reply purportedly filed beyond a filing deadline. WPT’s Reply in Support
14 reargues that there are no direct allegations which appear in the amended Notice to connect WPT to
15 the alleged violations of the Act. WPT also pointed out that WPT had not yet entered an appearance
16 in the proceeding and was not present at a July 17, 2003 pre-hearing conference where it was
17 discussed that Motions to Dismiss would be taken under advisement pending an evidentiary hearing.
18 WPT further opposed the Division’s earlier request for sanctions in its filing of April 2, 2004, in the
19 form of attorney’s fees.

20 On April 26, 2004, the Division filed what was captioned, “Securities Division’s Response to
21 Respondents’ Joint Motion to Strike”. Therein, the Division argued that Respondents’ Joint Motion
22 to Strike was unreasonable and the Respondents’ interests would not be substantially affected by the
23 denial of the Joint Motion to Strike.

24 On May 4, 2004, Yucatan, RHI, WPT and Mr. Kelly filed what was captioned, “Respondents’
25 Joint Reply in Support of Joint Motion to Strike”. Therein, Respondents replied to the Division’s
26 arguments made in the April 26, 2004, filing. Respondents argue that the Division relies on the
27 ARCP when they favor the Division, but deny their use by the Respondents depriving them of their
28 process of rights if the arguments of the Division in its Response/Reply are allowed consideration in

1 the proceeding.

2 On May 5, 2004, by Procedural Order, it was concluded that A.R.S. § 41-1062(A)(4)
3 controlled and as a result, it was concluded that discovery is not a matter of right in an administrative
4 proceeding. The Respondents' Joint Motion to Compel/Vacate and the Respondents' Joint Motion to
5 Strike and the Joint Motion for Sanctions were denied. WPT's Renewed Motion was taken under
6 advisement and WPT's Motion for Sanctions from the Division was denied as was the Division's
7 request for sanctions against Respondent WPT. A pre-hearing was also scheduled for May 27, 2004.

8 On May 27, 2004, at the pre-hearing conference, the Respondents and the Division appeared
9 through counsel. Discussions took place concerning when the hearing could be scheduled and when
10 the Division could provide a copy of its exhibits and witness list to Respondents. Subsequently,
11 counsel for Mr. Kelly wrote a number of letters to the parties and the presiding Administrative Law
12 Judge concerning the status of another proceeding in which he is involved whose hearing dates in late
13 October and November, 2004 might become available for this proceeding's hearing.

14 On July 21, 2004, counsel for the Division filed a request for a teleconference the week of
15 July 26, 2004.

16 On July 22, 2004, Respondents filed a Motion for a Pre-Hearing Conference to further discuss
17 the scheduling of a hearing because of potential scheduling conflicts.

18 On July 23, 2004, by Procedural Order, a pre-hearing conference was scheduled.

19 On July 29, 2004, at the pre-hearing conference, the Division and Respondents appeared
20 through counsel. The parties agreed upon the scheduling of the hearing which commences on
21 February 28, 2004. It was further agreed that the Division would provide, on October 1, 2004, to the
22 Respondents, copies of its witness list, exhibit list and copies of proposed exhibits. It was further
23 agreed that Respondents would provide, on December 1, 2004, to the Division, copies of their
24 witness lists, exhibit lists and copies of proposed exhibits to the Division.

25 Accordingly, a hearing should be scheduled as agreed.

26 IT IS THEREFORE ORDERED that a hearing on the above-captioned matter shall
27 commence on February 28, 2005 at 9:30 a.m. at the Commission's offices, 1200 West Washington
28 Street, Phoenix, Arizona.

1 IT IS FURTHER ORDERED that the parties shall also reserve March 1, 2, 3, 28, 29, 30 and
2 31, April 4, 5, 6, 7, 11, 12, 13 and 14, 2005 for additional days of hearing, if necessary.

3 IT IS FURTHER ORDERED that the Division shall provide by October 1, 2004, to the
4 Respondents, copies of its witness list, exhibit list and proposed exhibits with copies of same
5 provided to the presiding Administrative Law Judge.

6 IT IS FURTHER ORDERED that the Respondents shall provide by December 1, 2004, to the
7 Division, copies of their witness lists, exhibit lists and proposed exhibits with copies of same
8 provided to the presiding Administrative Law Judge

9 Dated this 30th day of July, 2004.


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

14 Copies of the foregoing were mailed/delivered
15 this 30 day of July, 2004 to:

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17 Jeffrey D. Gardner
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23 dba Yucatan Resorts, S.A. and
24 Resort Holdings International
25 dba Resort Holdings International, S.A.

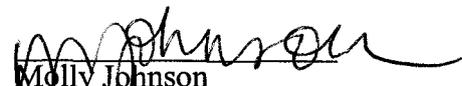
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Secretary to Marc E. Stern