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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

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

In the matter of:

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

MICHAEL E. KELLY,

Respondents.

DOCKET NO. S-03539A-03-0000

RESPONDENTS' JOINT MOTION TO
COMPEL

(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)

Arizona Corporation Commission
DOCKETED

MAR 24 2005

DOCKETED BY

NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."), Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."), and Yucatan Resorts, S.A. ("Yucatan S.A."), (collectively, the "Respondents") and file this, their Joint Motion Compel in the above-captioned matter presently scheduled to commence on March 28, 2005, and, in support thereof, would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

On November 10, 2004, Respondents' attorney, Jeff Gardner, submitted an Open Record Request to the Securities Division seeking information on the Respondents and other individuals and entities related to the above-referenced matter.¹ On Tuesday evening, March 15, 2005, the Securities Division provided Mr. Gardner, upon request, with a Privilege Log related to his Open Record Request.²

The Securities Division's Privilege Log includes an index of records that the Securities Division is withholding based on its claims of privilege. The Securities Division relies on the confidentiality provisions of Arizona Revised Statute §44-2042, as well as the attorney-client privilege, the best interest of state privilege, and the work product and investigative privileges. However, based on the Securities Division's description of the withheld documents, as set forth in the Privilege Log, it is clear that some of the "privileged documents" do not fall within any of the aforementioned privileges.

The Securities Division elected to make this proceeding public when it chose to issue the Temporary Order to Cease and Desist on May 20, 2003. At that point any cloak of secrecy was lifted and/or waived. The Securities Division is relying on these confidentiality statutes and alleged privileges to prevent the Respondents from obtaining information that may prove essential in the defense of this matter. Irrefutably, the Respondents' due process rights will be violated if they are not provided with documents that are responsive to Mr. Gardner's Open Record Request, and that are not privileged. Therefore, these documents should be produced or, at a minimum, be subjected to an *in camera* review by ALJ Marc Stern *prior to the Hearing* in this matter.

¹ Respondents had previously served discovery requests on the Securities Division, which were successfully objected to. Thus, the Securities Division did not produce any of the records covered by the discovery request.

² The Securities Division's Privilege Log, dated March 15, 2005, is attached hereto as Exhibit "A".

II. ARGUMENTS

The Securities Division relies on Arizona Revised Statute §44-2042 with regard to each of the items it identifies, and withholds, in the Privilege Log. A.R.S. §44-2042 deals with the confidentiality of certain documents, and provides:

- A. The names of complainants and all information or documents obtained by any officer, employee or agent of the Commission, including the shorthand reporter or stenographer transcribing the reporter's notes, in the course of any examination or investigation are confidential unless the names, information or documents are made a matter of public record.³

In the Privilege Log, the Securities Division provides a description of certain documents that it is withholding subject to a confidentiality provision, or some other proffered governmental privilege. The Respondents contest, *inter alia*, the following withheld documents:

1. Correspondence to other law enforcement agencies including e-mails, letters and faxes and other documents;
2. Correspondence received from other law enforcement agencies including e-mails, letters and faxes;
3. Correspondence including investor questionnaires, e-mails, letters and faxes from the Division requesting documents and information with or without a subpoena attached;
4. Correspondence received by the Division including e-mails, letters and faxes;
5. Correspondence written by the Division Staff including e-mails, letters and faxes to prospective witnesses or their counsel, investors, or others;
6. Information obtained from the internet and various publications or newspapers;
7. Documents related to service or attempted service of Respondents;
8. Subpoenas requesting information from various individuals or companies; and

³ A.R.S. §44-2042 (A).

9. Transcripts from examinations under oath or interviews with exhibits.

The documents described in the above-referenced paragraphs 1-9 do not fall within the confidentiality provision of A.R.S. §44-2042, or any other asserted privilege, as it is not information or documents obtained by any officer, employee or agent of the Commission, in the course of any examination or investigation. Moreover, many of the identified items constitute public records and, therefore, should be produced.

In particular, Respondents should be afforded access to any transcripts from examinations under oath (“EUO”) or interviews, *with exhibits*, that deal with subject entities and/or individuals of this matter – as ALJ Stern has specifically provided that the Respondents are entitled to this information.⁴ Indeed the failure or refusal of the Securities Division to produce such records will place the Securities Division in direct violation, and perhaps contempt, of ALJ Stern’s Order. Furthermore, Respondents are entitled to copies of all subpoenas requesting information from various individuals or companies related to any of the subject entities and/or individuals, as the subpoenas constitute public records and, therefore, are not subject to the confidentiality provisions of A.R.S. §44-2042.

With regard to both the transcripts from examinations under oath and the subpoenas, Respondents are entitled to uncover whether the Securities Division has circumvented ALJ Stern’s Order regarding the Respondents’ ability to participate and attend examinations under oath. Without disclosing this information, the Respondents and ALJ Stern have no way to ascertain whether the Securities Division has violated this directive. Moreover, Respondents should be afforded the opportunity to be made aware of any individuals that the Securities

⁴ ALJ Stern’s Tenth Procedural Order, dated March 17, 2005, provides, “It was decided that all parties to the proceeding would be entitled to the following: notice of formal interviews of witnesses by the Division with respect to the proceeding; cross-notice to the Division of depositions of these witnesses by the Respondents; the right of counsel for the Respondents in this proceeding to attend these formal interviews; and the right of the Respondents’ counsel to purchase a copy of that portion of the transcript relevant to the proceeding involving the aforementioned witnesses, but no other portion with respect to other investigations.”

Division has contacted but not included in their new Proposed Witness List, as these individuals may possess, and probably do possess, exculpatory evidence related to this matter.

Respondents also should be provided any information obtained by the Securities Division from the internet and various publications or newspapers because this information constitutes a public record, and is not subject to the confidentiality provisions of A.R.S. §44-2042, or any other proffered governmental or investigative privilege. Moreover, the Securities Division identifies this information as an exhibit in its new Proposed Exhibit List. The Securities Division throughout this entire administrative proceeding has made a habit of using the administrative rules related to discovery as both a sword and a shield. Here, the Securities Division is so bold incorporate public information into its new Proposed Exhibit List, yet withhold any information it does not want to become part of the proceeding on the basis that it is privileged. This position is untenable, and the responsive records should be immediately produced.

Respondents should be provided with any documents related to service or attempted service on the Respondents. With the exception of Lori Kelly, who ALJ Stern dismissed from the proceeding until such time as the Securities Division shows it has proper service,⁵ ALJ Stern appears to have rejected the Respondents' various Motions to Dismiss, based on subject matter and/or personal jurisdiction. These Motions are nonetheless live pleadings, and the Respondents are irrefutably entitled to uncover any evidence as to whether or not service was properly effectuated on the subject entities and/or individuals.

Additionally, the Securities Division has the burden of proving it has effectuated service on all of the relevant parties and, moreover, that such service was effectuated in compliance with laws related to service of process. Therefore, this information is not subject to any confidentiality provision under the Arizona Revised Statutes and/or asserted governmental

⁵ See, *inter alia*, ALJ Stern's Tenth Procedural Order.

privileges, and should be immediately produced. Indeed, several of the Respondents answered and appeared in this proceeding based upon the Securities Division's representations that such Respondents were served. Respondents certainly have the right to test those representations.

Furthermore, the documents described by the Securities Division in above-referenced records 1-5, which relate to correspondence, are not privileged, as they are not documents obtained by any officer, employee or agent of the Commission in the course of an examination or investigation. Rather, those documents relate to requests for information related to this matter. While the information actually obtained may (or may not) fall within the privilege, the correspondence related thereto certainly does not. Moreover, the correspondence, including e-mails, letters and/or faxes to prospective witnesses regarding this matter, constitutes public record and therefore is not subject to the confidentiality provisions.

Finally, Respondents should be provided with the Securities Division's memo regarding the initiation of the investigation related to the subject entities and individuals. This memo would, at a minimum, identify the date on which the investigation began. The Securities Division is not protecting a privileged secret from the public that an investigation actually was conducted prior to the filing of the Temporary Order to Cease and Desist on May 20, 2003. Moreover, during the Pre-Hearing Conferences, the Securities Division repeatedly represented that an investigation was undertaken. Thus, the Respondents are entitled to this information.

For all the foregoing reasons, the Securities Division of the Arizona Corporation Commission should be compelled to produce the aforementioned requested Open Records, or, at a minimum, the Parties should schedule a Pre-Hearing conference in front of ALJ Stern for an appropriate *in camera* review of the documents. This would enable the Parties to ascertain what, if any, of the responsive documents are privileged, and would protect Respondents' Due Process

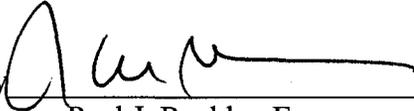
rights.

III. CONCLUSION.

For all of the foregoing reasons, the Respondents' Joint Motion to Compel the Securities Division to produce responsive and non-privileged documents should be, in all things, granted.

Respectfully submitted this ~~23rd~~ ^{24th} day of March, 2005.

ROSKA HEYMAN & DeWULF, PLC

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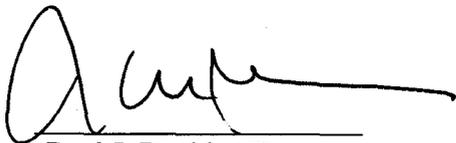
ORIGINAL and 13 copies of the foregoing
hand-delivered this ~~23rd~~^{24th} day of March, 2005 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this ~~23rd~~^{24th} day of March, 2005 to:

Honorable Marc Stern
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jaime Palfai, Esq.
Matthew J. Neubert, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
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Paul J. Roshka, Esq.

Exhibit A

COMMISSIONERS
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WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

BRIAN C. McNEIL
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ARIZONA CORPORATION COMMISSION

Fax Cover Sheet

of pages (including Cover Sheet) 04

Date Sent Tuesday, March 15, 2005 5:09:08 PM

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WARNING

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Index of Records

Public Access Request dated 11/15/2004 and clarified 12/2/2004
 In the Matter of Yucatan Resorts, Inc. et al., S-03539A-03-0000, ("YR")
 One Vision Children's Foundation, Inc., et al., S-03515A-02-0000, ("OV")
 The Chamber Group, et al., S-3438A-00-0000, ("CG")
 Unfiled case, S-03558A, ("X")
 Unfiled case, S-03559A, ("Y"),
 Investigative Information Only file 7442 ("A")
 Investigative Information Only file 7445 ("B")

File	Document Type	Description	Privilege
YR	Report	Case Opening Report prepared by Jamie Palfai for LeRoy Johnson, Victor Rodarte, Mark Sendrow, Commissioners	Confidentiality (ARS §44-2042); attorney/client; best interest of the State: work product & investigative privilege
YR	File Index	Index of the Case File maintained by investigator Gary Kirst	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, CG	Document Inventory	Inventory of bates stamped documents maintained by Gary Kirst	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV, CG	Bates stamped documents	Documents obtained by the Division in the course of its investigation including documents produced under a subpoena.	Confidentiality (ARS §44-2042); best interest of the state, interagency confidentiality agreement, investigative privilege, personal privacy
YR	Memos	Memos regarding conversations with prospective witnesses	Confidentiality (ARS §44-2042); best interest of the State: work product & personal privacy
YR, CG X	Memos	Memos relating results of investigation prepared by Division staff.	Confidentiality (ARS §44-2042); best interest of the State: work product, interagency confidentiality agreement, investigative privilege
YR, OV, CG, X	Memos	Memos regarding case strategy prepared by Division counsel.	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, X, Y, B	Memos	Memos regarding conversations with other law enforcement agencies	Confidentiality (ARS §44-2042); best interest of the State: work product, interagency confidentiality agreement
YR, X	Memos	Jamie Palfai memos to LeRoy Johnson regarding case status	Confidentiality (ARS §44-2042); attorney/client, best interest of the State: work product, investigative privilege

File	Document Type	Description	Privilege
YR, CG X	Correspondence	Correspondence to other law enforcement agencies including e-mail, letters, and faxes and other documents	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, CG X	Correspondence	Correspondence received from other law enforcement agencies including e-mail, letters and faxes	Confidentiality (ARS §44-2042); best interest of the State: interagency confidentiality agreement, investigative privilege
YR	Correspondence	Correspondence including investor questionnaire, e-mail, letters and faxes from the Division requesting documents and information with or without a subpoena attached	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV, CG	Correspondence	Correspondence received by the Division including e-mail, letters and faxes	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege
YR, OV, CG	Correspondence	Correspondence written by Division staff including e-mail, letters and faxes to prospective witnesses or their counsel, investors, or others	Confidentiality (ARS §44-2042); best interest of the State: work product & investigative privilege
YR, OV, CG, X	Documents	Information obtained from the internet and various publications or newspapers	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege
YR	Documents	Documents relating to service or attempted service of respondents	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege
YR, CG, X	E-mail	Intra-staff e-mail relating information regarding case status, prospective witnesses, investigative information or case strategy	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV, CG, X, Y, B	Documents	Information and Documents obtained from other Law Enforcement Agencies, courts, or court appointed Receivers.	Confidentiality (ARS §44-2042); best interest of the State: interagency confidentiality agreement, investigative privilege
YR, OV, X, Y, A, B	Subpoena	Subpoenas requesting information from various individuals or companies	Confidentiality (ARS §44-2042); ARS §44-2042, best interest of the State: investigative privilege
YR, OV, CG, X, Y	Documents	Documents obtained from investors and prospective witnesses	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege

File	Document Type	Description	Privilege
YR, CG, X, Y, A, B	Notes, Database check form, print outs	Information from investigative databases and Investigator notes about information obtained from law enforcement agencies, print outs from investigative database searches, and document drafts	Confidentiality (ARS §44-2042); best interest of the State: interagency confidentiality agreement, investigative privilege, personal privacy
YR, OV, X, Y, A, B	EUO, interview	Transcripts from Examinations Under Oath or interviews with exhibits	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege
YR, OV, CG X, Y, B	complaints	Complaints and documents submitted to the Division by investors and others	Confidentiality (ARS §44-2042); best interest of the State: investigative privilege, personal privacy
YR, CG, X	Undercover docs	Undercover transcripts, tapes, documents, and computer disks	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR	Research	Legal Research	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV, CG	Attorney Notes file	Notes and Working copies of possible examination questions and various documents with highlighting and hand written notes	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV, CG	workpapers	Drafts and working copies of documents, hand written notes	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege
YR, OV	databases	Databases and spreadsheets holding information obtained in the course of the investigation	Confidentiality (ARS §44-2042); best interest of the State: work product, investigative privilege, interagency confidentiality