

ORIGINAL



0000017527

BEFORE THE ARIZONA CORPORATION COMMISSION

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

COMMISSIONERS

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

**In the matter of:**

**YUCATAN RESORTS, 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  
Mexico C.P. 77500

**YUCATAN RESORTS, S.A.,**  
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

**RESORT HOLDINGS INTERNATIONAL, 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  
Mexico C.P. 77500

**RESORT HOLDINGS INTERNATIONAL, S.A.,**  
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

DOCKET NO. S-03539A-03-0000

**SECURITIES DIVISION'S RESPONSE  
TO RESPONDENTS' JOINT MOTION  
FOR RECONSIDERATION**

Arizona Corporation Commission

**DOCKETED**

MAR 25 2005

DOCKETED BY *KL*

AZ CORP COMMISSION  
DOCUMENT CONTROL

2005 MAR 25 A 8:21

RECEIVED

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

13 In filing their Joint Motion for Reconsideration of Order Denying Continuance (“Motion for  
 14 Reconsideration”), Respondents fail to present anything new or meritorious upon which the  
 15 Administrative Law Judge (“ALJ”) would have cause to reconsider his prior rejection of  
 16 Respondents’ Joint Motion for Continuance of Hearing (“Joint Motion”). Given that this Motion for  
 17 Reconsideration effectively reiterates the same failed arguments, the Securities Division requests the  
 18 Motion for Reconsideration be denied.

19 ***Discussion***

20 As in the previous Joint Motion, Respondents ultimately argue that the supplementation of  
 21 the Division’s Proposed List of Witnesses and Exhibits intentionally violated the ALJ’s order to  
 22 timely exchange exhibits. Such a claim distorts the ALJ’s order<sup>1</sup> and ignores the record that was  
 23 made when the Division was initially asked to produce its witness and exhibit list many months prior  
 24

25 <sup>1</sup> The Procedural Order following the July 29, 2004, pre-hearing conference actually states: “...It was  
 26 further agreed that *the Division* would provide, on October 1, 2004, to the Respondents, copies of its  
 witness list, exhibit list and copies of proposed exhibits. (Emphasis added).

1 to the hearing. As the Securities Division pointed out during the May 27, 2004 pre-hearing  
2 conference in this matter, supplementation was inevitable if the Division was ordered to make a  
3 witness and exhibit production so far in advance of the hearing. "You may need to amend it" was the  
4 ALJ's reply.<sup>2</sup> There was no objection from Respondent's counsel at that time. Plainly, amending the  
5 Proposed Witness and Exhibit lists did not violate the ALJ's order.

6 Respondents also revisit their failed argument from last week that the Division's response  
7 time to their "Open Records Request" is somehow grounds for a continuance. Not only has this issue  
8 already been ruled on, but it is also moot because Respondents have already reviewed the records  
9 produced by the Securities Division in response to the Public Records Request. The review having  
10 been concluded, this claim can hardly be valid grounds for a continuance. Moreover, the Division  
11 readily maintains that it has met its statutory obligation and is unaware of any requirement that the  
12 production of all responsive documents from five cases and two IIOs along with an index of  
13 confidential or privileged items be made within an arbitrary two week deadline.

14 Respondents also reiterate their failed Joint Motion claim that they need additional months to  
15 check for "conflicts," apparently stemming from the addition of a handful of exhibits that are almost  
16 exclusively generated or disseminated by their own clients. Without providing any possible basis for  
17 such a conflict, this claim amounts to nothing more than a tired pretext.

18 At last, Respondents argue that the work they have done in preparation for an investor witness  
19 named Thomas Newland must now be thrown out because the Division has only recently corrected a  
20 typographical error in one of the listed investor's names from Thomas to Robert Newland. Since the  
21 exhibits which Respondents have had for almost six months listed Mr. Newland under his correct  
22 name along with his correct address, Respondents have obviously suffered no genuine harm from the  
23 Division's typographical error. That is, of course, unless Respondents have spent the last 175 days  
24 only examining witness names and not their accompanying exhibits.

25  
26  

---

<sup>2</sup> See the May 27, 2004, Pre-Hearing Transcript at page 44

1 **Conclusion**

2 Respondents' Motion for Reconsideration offers no compelling reason to justify a last  
3 minute continuance. The Securities Division respectfully requests that the Motion for  
4 Reconsideration be denied.

5 RESPECTFULLY SUBMITTED this 25th day of March, 2005.

6  
7 By   
8 Jamie B. Palfai  
9 Mark Dinell  
10 Attorneys for the Securities Division of the  
11 Arizona Corporation Commission

12 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
13 filed this 25th day of March, 2005, with

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington  
17 Phoenix, AZ 85007

18 COPY of the foregoing hand-delivered this  
19 25th day of March, 2005, to:

20 Mr. Marc Stern  
21 Administrative Law Judge  
22 Arizona Corporation Commission/Hearing Division  
23 1200 West Washington  
24 Phoenix, AZ 85007  
25  
26

1 COPY of the foregoing faxed and mailed  
2 this 25th day of March, 2005, to:

3 Martin R. Galbut, Esq.  
4 Jeana R. Webster, Esq.  
5 GALBUT & HUNTER, P.C.  
6 Camelback Esplanade, Suite 1020  
7 2425 East Camelback Road  
8 Phoenix, Arizona 85016  
9 Attorneys for Respondents Yucatan Resorts, Inc.,  
10 Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

11 Paul J. Roshka, Jr., Esq.  
12 James McGuire, Esq.  
13 ROSHKA HEYMAN & DEWULF, P.L.C.  
14 400 East Van Buren Street, Suite 800  
15 Phoenix, Arizona 85004  
16 Attorneys for Respondents Michael and Lory Kelly

17 Joel Held, Esq.  
18 Elizabeth Yingling, Esq.  
19 Jeffrey D. Gardner, Esq.  
20 BAKER & MCKENZIE  
21 2300 Trammell Crow Center  
22 2001 Ross Avenue, Suite 2300  
23 Dallas, Texas 75201  
24 Attorneys for Respondents Yucatan Resorts, Inc.,  
25 Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

26  
By: 