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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS:

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

2005 SEP 19 A 10:51

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:

YUCATAN RESORTS, INC., d/b/a
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

DOCKET NO. S-03539A-03-0000

**RESPONDENTS' JOINT MOTION TO
PRECLUDE THE TESTIMONY OF
ANGELA COLE, AND PRECLUDE ALL
EXHIBITS RELATED THERETO**

RESORT HOLDINGS INTERNATIONAL, INC. d/b/a
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

(Assigned to Administrative Law Judge
Marc E. Stern)

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY
Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama

MICHAEL E. KELLY and LORI KELLY,
husband and wife,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;

Respondents.

NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."), Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."), Yucatan

1 Resorts, S.A. (“Yucatan S.A.” or, collectively, “Respondent Entities”), and Michael E. Kelly
2 (“Kelly”) (collectively, the “Respondents”) and file this, their Joint Motion to Preclude the
3 Testimony of Angela Cole and Exhibits Related Thereto. In support thereof, Respondents would
4 respectfully show the following:

5 I.

6 INTRODUCTORY STATEMENT

7 The purpose of this Motion is to preclude the testimony of the Securities Division proffered
8 fact witness, Angela Cole, and all exhibits prepared by Ms. Cole and/or about which Ms. Cole is
9 being called to testify.

10 Ms. Cole is being called as a fact witness by the Securities Division. She testified that she
11 is employed by the Texas State Securities Board as an “Enforcement Attorney.”¹ As an
12 enforcement attorney, Ms. Cole is charged with “[c]arrying out investigations in order to prevent
13 and detect violations of the Texas Securities Act.”² Yet, Ms. Cole is not being called to testify
14 about any investigation involving the Respondents that is being conducted by the Texas State
15 Securities Board.³ Rather, the Securities Division is calling Ms. Cole to translate and/or testify
16 about the translation of purported Panamanian corporate records. Why does the Securities
17 Division of the *Arizona* Corporation Commission need to call an attorney from the *State of Texas*
18 to translate and/or testify about translated documents? The only reason is to prejudice the
19 Respondents in this case.

20 The reality is that Ms. Cole has no personal knowledge of any of the documents that she is
21 being called to translate or testify about. Her testimony is unnecessary, irrelevant and pure hearsay
22 without exception. For this reason, Ms. Cole should be precluded from testifying.

23 Further, the exhibits about which Ms. Cole is being called to testify are not properly
24 certified and/or notarized translation of the Panamanian corporate records. Indeed, the translations
25

26 ¹ See Hearing Transcript, dated April 14, 2005, at p. 1910 at lines 1-24.

27 ² *Id.* at p. 1910, line 25 through p. 1911, line 3.

³ *Id.* at p. 1914, lines 4 through 19.

1 of the purported Panamanian records were not properly performed and, importantly, do not satisfy
2 the express and unambiguous order, ALJ Stern, to have “certified” translations produced “the right
3 way.”

4 For the foregoing reasons, Ms. Cole should be precluded from testifying. Additionally, the
5 purported Panamanian corporate records (written in Spanish) and the English translations of such
6 records should be precluded from admission, and to the extent any testimony related thereto
7 already exists in the record for this hearing, it should be stricken.

8 **II.**

9 **ARGUMENT**

10 Ms. Cole, an enforcement attorney in Texas, is being called by the Securities Division for
11 one reason: to prejudice the Respondents in this case.⁴ She is not being called to testify about any
12 inquiries and/or investigations regarding any Respondent in this administrative proceeding.⁵
13 Instead, the Securities Division seeks to use her Spanish linguistic skills to assist it in translating or
14 testifying about Panamanian corporate records (written in Spanish) that purport to relate to one or
15 more parties to this case.

16 During her testimony, Ms. Cole indicated that she obtained alleged corporate information
17 on Yucatan Resorts, S.A., Resort Holdings International, S.A., and World Phantasy Tours, Inc.,
18 from the public registry of Panama.⁶ Ms. Cole testified that she contacted somebody at the
19 Comision Nacional de Valores in Panama, and this contact in Panama accessed the Panamanian
20 public registry’s database.⁷ Allegedly, from public registry database, the contact obtained
21 corporate information and resolutions from these entities, which was eventually passed along to
22 Ms. Cole who, in turn, passed this information along to the Securities Division of the Arizona
23 Corporation Commission.⁸

24
25 ⁴ *Id.* at p. 1910, lines 14-20.

26 ⁵ *Id.* at p. 1914, lines 4-19

27 ⁶ *Id.* at p. 7, lines 7-14.

⁷ *Id.* at p. 1926, line 2 through p. 1927, line 23.

⁸ *Id.*

1 All of the documents that Ms. Cole testified to receiving from the Comision Nacional de
2 Valores were in Spanish. Rather than hire a certified Spanish-to-English translator, the Securities
3 Division called Ms. Cole to translate these alleged corporate records from the stand at the Hearing
4 on April 13, 2005.⁹

5 The alleged corporate records from Panama (written in Spanish) are hearsay, and so are the
6 alleged English translations. "Hearsay" is a statement, other than one made by the declarant while
7 testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted. See
8 Arizona Rule of Evidence 801. Hearsay is not admissible except as provided by applicable
9 constitutional provisions, statutes, or rules. See Arizona Rule of Evidence 802. The Arizona Rules
10 of Evidence also address situations where a party attempts to introduce multiple level hearsay.
11 Specifically, Arizona Rule of Evidence 805 provides, "[h]earsay included within hearsay is not
12 excluded under the hearsay rule if each part of the combined statements conforms with an
13 exception to the hearsay rules provided in these rules."

14 Ms. Cole's testimony regarding the alleged Panamanian corporate records is multi-level
15 hearsay with no available exception at any level—as the testimony is inextricably intertwined with
16 out of court statements, by someone other than Ms. Cole while testifying at hearing, and the
17 information is being offered for the exclusive purpose of proving the truth of the matters asserted
18 therein. Likewise, the English translations constitute hearsay.

19 Additionally, Ms. Cole is neither a certified translator, nor an expert on Panamanian
20 corporate law.¹⁰ Nonetheless, the Securities Division attempted to have Ms. Cole self-certify the
21 authenticity of the purported Panamanian corporate records—that she allegedly received from the
22 Comision Nacional de Valores. Attorney Held objected and stated, "[w]e are going to object, we
23 are going to object to it again on the ground the Ms. Cole is not, unless I am missing something, is
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25
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⁹ See generally, Ms. Cole's testimony during the Hearing on April 1, 2005.

¹⁰ *Id.* at p. 1956, line 17 through 1957, line 4.

1 not a certified translator.”¹¹ Similarly, Attorney Roshka objected that an individual cannot
2 self-certify a translated record.¹²

3 ALJ Stern recognized the prejudicial impact of the Securities Division’s translation tactic,
4 and ordered the Securities Division to obtain complete and certified English transcripts of the
5 alleged Panamanian records.¹³ Further, ALJ Stern repeatedly admonished the Securities Division
6 for its tactics.¹⁴ Eventually, the Respondents were provided with the option of moving forward
7 with Ms. Cole’s testimony, with the understanding that Respondents have a running objection to
8 every question, answer and exhibit related to Ms. Cole’s testimony, or to stay Ms. Cole’s
9 testimony until the Securities Division obtained a certified transcript.¹⁵ Specifically, ALJ Stern
10 stated:

I don’t know whether you [the Securities Division] need 30, 60 days to *get
11 these documents translated by a certified translator* or what. *I want to get it
12 done the right way.* And I don’t want a surprise because I don’t want to
continue [the Hearing] September to November or something.¹⁶

13 Further, ALJ Stern ordered:

14 . . . [I]f you want to introduce foreign language documents, okay, I prefer that
15 they be translated the right way . . . However, okay, *I have asked you to make
16 translations certified of these documents.*¹⁷

17 Mr. Stern also took notice of the fact that it was a bit unusual for the Securities Division to
18 call a witness from the State of Texas to translate Panamanian corporate records that are written in
19 Spanish. Specifically, ALJ Stern stated, “I think in a city the size of Phoenix and with the Spanish
20 population being as large as it is and I know the courts have translators they use all the time.”¹⁸

21 However, despite all of these orders and warnings by ALJ Stern to the Securities Division
22 about the need to file certified Spanish-to-English translations of the alleged Panamanian corporate
23 records, the Securities Division failed. The records are not properly certified or notarized. Thus,

24 ¹¹ *Id.* at p. 1944, lines 3-16.

25 ¹² *Id.* at p. 1944, line 3 through p. 1945, line 8.

26 ¹³ *Id.* at p. 1975, line 10 through p. 1946, line 14.

27 ¹⁴ *Id.* at p. 1945, line 15 through p. 1946, line 6; see also, p. 1947, line 12 through p. 1949, line 23; p. 1951, line 7
through p. 1952, line 6.

¹⁵ *Id.* at p. 1970, line 2 through p. 1971, line 4.

¹⁶ *Id.* at p. 1975, lines 22 through 14 (emphasis supplied).

¹⁷ *Id.* at p. 1979, lines 5-14 (emphasis supplied.)

¹⁸ *Id.* at p. 1984, lines 9-15.

1 the documents remain unauthenticated and unoriginal hearsay and, equally important, the
2 Securities Division is in direct violation of ALJ Stern's express and unambiguous order regarding
3 the requirement that the translations be performed by a certified translator. Therefore, Ms. Cole's
4 testimony should be precluded, and all of the Spanish and English corporate records precluded
5 from admission in this case.

6 **III.**

7 **CONCLUSION**

8 For the foregoing reasons, the Respondents' Joint Motion to Preclude the Testimony of
9 Angela Cole, and All Exhibits Related Thereto should, in all things, be granted. Further, any prior
10 testimony should be stricken from the record.

11 RESPECTFULLY SUBMITTED this 19th day of September, 2005.

12 ROSHKA DeWULF & PATTEN, PLC

13
14 By 

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ORIGINAL and thirteen copies of the foregoing
hand-delivered this 19th day of September, 2005 to:

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

COPY of the foregoing hand-delivered
this 19th day of September, 2005 to:

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Administrative Law Judge/Hearing Officer
Hearing Division
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