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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION
DOCUMENT CONTROL

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;
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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;
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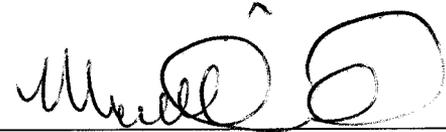
DOCKET NO. S-03539A-03-0000

SECURITIES DIVISION'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS
OF LAW AGAINST RESPONDENT
WORLD PHANTASY TOURS

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

12
 13 Pursuant to the Administrative Law Judge's Order, the Securities Division submits the
 14 following proposed Findings of Fact and Conclusions of Law against Respondent World Phantasy
 15 Tours, Inc.

16 RESPECTFULLY SUBMITTED this 30th day of June, 2006.

17
 18 By: 
 19 Mark Dinell
 20 Attorney for the Securities Division of the
 Arizona Corporation Commission

1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
filed this 30th day of June, 2006, with

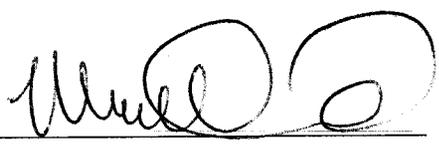
2 Docket Control
3 Arizona Corporation Commission
1200 West Washington
4 Phoenix, AZ 85007

5
6 COPY of the foregoing hand-delivered this
30th day of June, 2006, to:

7 Marc E. Stern
8 Administrative Law Judge
Arizona Corporation Commission/Hearing Division
9 1200 West Washington
10 Phoenix, AZ 85007

11 COPY of the foregoing mailed
this 30th day of June, 2006, to:

12
13 Gabriel Humberto Escalante Torres
14 World Phantasy Tours, Inc.
15 Avenida Coba., No 82, SM 3, Lote 10
3er Piso Cancun, Q. Roo
16 Mexico 77500

17
18 By: 

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

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3 1. Respondent Michael Eugene Kelly ("Kelly") is a married man, previously a resident of
4 Indiana, now residing in Cancun, Mexico or Panama City, Panama.

5 2. Respondent Yucatan Resorts, Inc. ("Yucatan") was an unincorporated entity based out of
6 South Bend, Indiana.

7 3. Respondent Yucatan Resorts, S.A. ("Yucatan-SA") is a foreign corporation that was
8 registered in Panama City, Panama on or about June 30, 1998.

9 4. Respondent Resort Holdings International, Inc., ("RHI"), is a Nevada corporation that
10 incorporated on or about July 16, 1999.

11 5. Respondent Resort Holding International, S.A. ("RHI-SA") is a foreign corporation that
12 was registered in Panama City, Panama on or about April 16, 2002.

13 6. Respondent World Phantasy Tours, Inc., aka Majesty Travel aka Viajes Majesty ("World
14 Phantasy Tours") is a foreign corporation that was registered in Panama City, Panama.

15 7. All Respondents may collectively be referred to herein as "Respondents."

16 8. Kelly was the founder, president and owner of Yucatan Resorts, Inc., and was a director,
17 officer and owner of Yucatan-SA. Kelly is the founder, chairman and owner of RHI, and is the
18 controlling party of RHI-SA.

19 9. Since at least 2000, Respondents have been directly or indirectly engaged in the offer and
20 sale of securities to the general public in Arizona in the form of investment contracts as defined by
21 A.R.S. § 44-1801(26).

22 10. Respondents' investment contract was marketed as a Universal Lease program
23 ("Universal Lease"), in which investors were offered the opportunity to purchase 25 year leases in
24 one of various hotel properties in Cancun and Acapulco, Mexico, as well as parts of Central
25 America and have the units managed by World Phantasy Tours. Investors were told they would
26 receive a fixed rate return on their investment.

1 11. Respondents Kelly, Yucatan and Yucatan-SA designed, marketed and operated this
2 Universal Lease during a period from approximately March 2000 through December 2002. Kelly,
3 Yucatan and Yucatan-SA generated and distributed Universal Lease promotional materials,
4 recruited sales agents throughout Arizona, and performed administrative and banking functions
5 relating to the Universal Lease.

6 12. In the summer of 2002, Respondents RHI and RHI-SA began replacing Respondents
7 Yucatan and Yucatan-SA as the primary entities responsible for marketing and managing the
8 Universal Lease. In so doing, Kelly, RHI and RHI-SA generated and distributed Universal Lease
9 promotional materials, recruited sales agents throughout Arizona, and performed administrative
10 and banking functions relating to the Universal Lease. Respondents continued selling the
11 Universal Lease in Arizona until the Temporary Cease and Desist Order was entered in this case
12 on May 20, 2003.

13 13. Respondents recruited sales agents throughout the United States to sell the Universal
14 Lease to investors. Kelly instructed personnel to focus on recruiting insurance agents as salesmen,
15 as insurance agents already had a book of clients to whom they could sell the investment.

16 14. Investors were afforded the opportunity to select one of three separate Universal Lease
17 "options." Under the Universal Lease's alleged "Option 1," investors could choose to forego any
18 returns on their investments, and instead elect to utilize a timeshare unit themselves. Under this
19 option, Respondents would assign to the investor a specific unit, for a specific week, and at a specific
20 location, and only after an investment had been made. The investor would have no input into the
21 date, quality or location of this timeshare assignment.

22 15. Additionally, an Option 1 purchaser was required to pay annual management fees, ranging
23 from \$380 to \$645 per year, with such amounts subject to Consumer Price Index increases. This
24 translated into an effective surcharge of at least \$9,000 to \$16,125 over the life of the 25 year
25 timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total payment of \$14,000

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1 to \$21,125 in return for 12 weeks of timeshare access over a 25 year period at an unknown unit, at an
2 undisclosed location, during an undisclosed time of year.

3 16. No evidence was presented that a single Arizona investor opted for Option 1 of the
4 Universal Lease program or that a single Arizona Universal Lease sales agent sold a Universal Lease
5 under Option 1. One sales agent apparently chose Option 1 for his own purchase.

6 17. The Universal Lease Option 2, which presented investors the opportunity to rent out
7 assigned timeshare units themselves, contained many of the same costs and conditions as that of
8 Option 1.

9 18. Option 2 again required the purchaser to forego any guaranteed investment returns, and
10 instead imposed annual maintenance fees on the purchaser for the full 25 year lease term.
11 Prospective Option 2 purchasers had to also await a determination by the Respondents, after the
12 purchase had been made, as to the location, resort type and permitted dates of use for the timeshare.
13 Respondents' brochures warned that this self-renting option would not bring in the same level of
14 revenues as would a professional third party servicing agent as offered in Option 3.

15 19. No evidence was presented that a single Arizona investor opted for Option 2 of the
16 Universal Lease program or that a single Arizona Universal Lease sales agent sold a Universal Lease
17 under Option 2.

18 20. Respondents' sales literature and the sales presentation of Respondents' sales agents
19 principally discussed on Option 3. According to Universal Lease promotional brochures, investors
20 who selected Option 3 would be eligible to receive a fixed 11 percent annual return on their
21 investments for a period of 25 years, after which time the lease would be renewable for another 20
22 years. Respondents later changed the offered return to new investors from 11 % to 9%.

23 21. At all times relevant, for an investor to reap the 11 and later 9 percent per annum return
24 under this Universal Lease option, the investor was required, as part of his investment, to hire World
25 Phantasy Tours to managed his or her investment.

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1 22. The selection of World Phantasy as the third party leasing agent was the only listed means
2 under which investors could earn the promised 11 or 9 per cent rate of return on their Universal
3 Lease investments.

4 23. To select World Phantasy as the servicing agent, investors were instructed to complete a
5 formal Management Agreement with the company. At all times relevant, this World Phantasy
6 Management Agreement was bundled with the Universal Lease promotional and application
7 materials, and was the single management company identified for servicing the various participating
8 resorts.

9 24. Evidence was presented at hearing that no independent third party management company
10 capable of operating under the constraints of the Universal Lease program existed.

11 25. Once investors had made their investments in Respondents' Universal Lease program and
12 had signed the Management Agreement with World Phantasy, the investors were to receive an 11
13 and later 9 percent per annum return on their investments for the life of the Universal Lease. The
14 investors had no duties or responsibilities following their investments, and only Respondents were
15 responsible for developing new units or managing existing rental units in order to generate the profits
16 that would be paid to investors.

17 26. According to Respondents' and their marketing literature, Option 3 of the Universal Lease
18 provided advantages to more traditional investments. Among these was the claim that Option 3 of
19 the Universal Lease program provided a far superior rate of return than most other investments. A
20 second claim was that the Universal Lease was supported by "debt-free" resort properties, and that as
21 a result the Universal Lease program was fully safe and secure.

22 27. Option 3 was also the only of the Universal Lease options that also allowed investors to
23 recoup up to 5 percent of any liquidation penalty incurred during the process of rolling other
24 investments into the Universal Lease program. Investors testified at hearing that this feature was an
25 added incentive for them to exchange their existing investment portfolios which had surrender
26 charges into Option 3 of the Universal Lease Program.

1 28. All evidence presented at hearing showed that Arizona investors involved in the Universal
2 Lease program chose Option 3, the investment option and that all sales by Arizona Universal Lease
3 sales agents were for Option 3.

4 29. Although Respondents' and their sales agents distributed company brochures and
5 promotional materials to prospective Universal Lease investors, these investors were never
6 apprised as to the financial condition of Respondents, were never informed as to the distribution
7 and uses of Universal Lease investment funds, and were never given financial statements
8 reflecting the financial condition of any of the Respondents.

9 30. Universal Lease sales agents received commissions reaching upwards of 20 percent for
10 investments made in the Universal Lease program under Option 3. These commissions were subject
11 to increases in instances where agents qualified for bonuses and/or sales overrides. Universal Lease
12 investors were not informed about the existence of these commissions or their amounts.

13 31. The safety and security of investments in the Universal Lease were also routinely described
14 as having full insurance. Such claims were misleading in that, although some of the resorts
15 underlying the Universal Lease program may have had some form of casualty insurance, the
16 Universal Lease program itself did not.

17 32. Under the terms of the Universal Lease program, investors were required to invest a
18 minimum of \$5,000 dollars, but they were allowed to invest any amount in excess of that sum.
19 Investment funds were made payable to Yucatan or Yucatan-SA and, subsequently, to RHI or
20 RHI-SA.

21 33. Prospective investors were given the option to roll part or all of their IRA portfolios into
22 the Universal Lease program. In doing so, investors were effectively replacing their existing
23 retirement savings with the Universal Lease timeshare program. The Universal Lease application
24 contained a specific form to facilitate the transfer of investors' retirement portfolios into
25 Respondents' investment program.

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1 34. Although Respondents described World Phantasy Tours as an independent, third-party
2 management company, the evidence presented showed that Kelly had purchased World Phantasy
3 Tours in early 1999. At the time, World Phantasy Tours was just a travel agency in Panama City,
4 with only two or three employees. Kelly also told at least two individuals that he owned or
5 controlled World Phantasy Tours. Respondents failed to disclose these facts to investors.

6 35. During the time period of 2001 to 2002, the officers and directors of Respondents Yucatan-
7 SA and RHI-SA were also acting as officers and directors of World Phantasy. Respondents failed to
8 disclose these facts to investors.

9 36. 428 Arizona investors purchased 591 Universal Leases from Respondents for an
10 investment total of \$26,727,622.35. \$3,668,455.46 was refunded to investors. The net investment
11 by Arizona investors was \$23,059,166.89.

12 37. All 591 Arizona Universal Leases listed World Phantasy Tours as the third party leasing
13 agent.

14 38. During the period from February 11, 2000 to October 31, 2003, Respondents deposited
15 Universal Lease investment funds into a bank account in the name of Yucatan Resorts at the
16 National City Bank of Indiana, where they were pooled with other investors' funds. Of the
17 \$174,353,811 that Respondents deposited into the account, \$161,064,574, or 92% came from
18 investors. Respondents directly paid investors \$31,531,470 from the funds in that account. The
19 money that investors received in payment from that account came from other investors. Evidence
20 was presented at hearing that checks were received by investors from this account with the name
21 of World Phantasy Tours on the check, despite the fact that the account was in the name of
22 Yucatan Resorts. Kelly was a signator on the account. Respondents failed to disclose these facts
23 to investors.

24 39. Respondents paid \$22,326,366 from that account in commissions to sales agents.
25 Respondents paid \$71,802,663 from that account to other entities, some of which evidence in the
26 case was presented were controlled by Kelly, including Yucatan Investments. Evidence was

1 presented that one reason Kelly helped create the Universal Lease program was to pay back
2 investors in the Yucatan Investments promissory note program. Respondents failed to disclose
3 these facts to investors.

4 40. During the period of April 19, 2002 to May 20, 2003, Respondents deposited Universal
5 Lease investment funds into a bank account in the name of Resort Holdings International Lease
6 Account at the National City Bank of Indiana, where they were pooled with other investors' funds.
7 Of the \$130,703,929 that Respondents deposited into the account, \$128,993,118, or 99% came
8 from investors. Respondents failed to disclose these facts to investors.

9 41. Respondents paid \$23,523,128 from that account directly to sales agents as commissions,
10 while \$39,614,453 went to other entities, some of which evidence in the case was presented were
11 controlled by Kelly. Respondents failed to disclose these facts to investors.

12 42. Respondents wired \$15,300,000 from that National City Bank account to an account at
13 First Bank of Miami in the name of World Phantasy Tours, Inc. A total of \$15,315,252 was
14 deposited to that account. Of that amount, \$14,258,949 was paid to investors. Evidence was
15 presented by an expert witness that as 99% of the money in the RHI National City Bank account
16 came from investors and as 99.9% of the money in the World Phantasy Tour's First Bank of
17 Miami account came from the RHI National City Bank account, the \$14,258,949 was paid to
18 investors from the World Phantasy Tour's First Bank of Miami account was money received from
19 investors. Respondents failed to disclose these facts to investors.

20 43. Yucatan Investment Corp. ("Yucatan Investments") was the subject of an administrative
21 order by the New Mexico Securities Division on May 18, 1999, for the sale of unregistered, non-
22 exempt securities - in the form of 9 month promissory notes - through unlicensed sales agents.
23 Respondent Kelly was the sole incorporator, statutory agent, president and secretary of Yucatan
24 Investments, and Yucatan Investments was based out of the same business address as Respondents
25 Yucatan, Yucatan-SA, RHI, and RHI-SA. Yucatan Investments' operation was the immediate
26 predecessor to Respondents' current Universal Lease program.

1 44. Yucatan Investments was the subject of an administrative order by the South Carolina
2 Securities Division on July 26, 1999, for the sale of unregistered, nonexempt securities – in the form
3 of 9 month promissory notes - through unregistered sales agents.

4 45. Yucatan Investments was the subject of a Cease and Desist order by the Minnesota
5 Department of Commerce on October 4, 1999, for the sale of unregistered, nonexempt securities.
6 Respondent Kelly, endorsing as the company's president, consented to this Order on September 15,
7 1999.

8 46. Yucatan Investments was the subject of an administrative order by the Connecticut
9 Department of Banking, on November 7, 2000, for the sale of unregistered, nonexempt securities –
10 in the form of promissory notes - through unlicensed sales agents.

11 47. Respondents Kelly and Yucatan-SA were the subject of an administrative order by the
12 Wisconsin Securities Division on March 28, 2001, for the sale of unregistered securities by an
13 unlicensed sales agent and for securities fraud in violation of Wisconsin law.

14 48. Yucatan-SA was the subject of an administrative cease and desist order on October 28,
15 2002, from the Pennsylvania Securities Commission arising out of multiple registration and fraud
16 violations as proscribed by the Pennsylvania Securities Act.

17 49. The Universal Lease program was developed by Respondents in order to pay back the
18 investors who purchase promissory notes from Yucatan Investments. At the time that Respondents
19 began selling the Universal Lease program, they had not created a plan that would allow them to
20 repay investors.

21 50. Evidence was presented that Arizona investors had no knowledge that Yucatan
22 Investments, Yucatan, Yucatan-SA, and Kelly had been the subject of previous sanctions based on
23 multiple violations of state securities laws and that salesmen did not inform investors of the orders.

24 51. Despite repeated marketing claims that the Universal Lease program was safe and
25 guaranteed, investors testified that they have not been receiving their payments of their Universal
26 Lease investments.

1 52. Kelly, Yucatan, Yucatan-SA, RHI and RHI-SA entered into a settlement with the ACC that
2 was approved on February 2, 2006 and entered as a final judgment on February 21, 2006, in
3 Maricopa County Superior Court No. CV 2006-001547. As part of that judgment, the parties agreed
4 that no findings of fact or conclusions of law in this proceeding shall be attributable to Kelly,
5 Yucatan, Yucatan-SA, RHI and RHI-SA. World Phantasy Tours was not a party to the settlement or
6 judgment.

7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution and the Securities Act.

10 2. World Phantasy Tours offered or sold securities within or from Arizona, within the
11 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

12 3. World Phantasy Tours violated A.R.S. § 44-1841 by offering or selling securities that
13 were neither registered nor exempt from registration.

14 4. World Phantasy Tours violated A.R.S. § 44-1842 by offering or selling securities
15 while neither registered as a dealer or salesman nor exempt from registration.

16 5. World Phantasy Tours violated A.R.S. § 44-1991 by directly or indirectly (a)
17 employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading
18 omissions of material facts, or (c) engaging in transactions, practices or courses of business which
19 operate or would operate as a fraud or deceit, including:

20 a. Falsely informing investors that World Phantasy Tours was a separate,
21 independent company, when in fact it was controlled by Kelly;

22 b. Falsely informing investors that Respondents would generate profits to be
23 paid to investors by leasing their units or by purchasing additional units;

24 c. Failing to inform investors that their own funds would be used to make
25 interest payments to investors;

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1 d. Failing to inform investors that commissions of up to 20% would be paid to
2 salesmen for selling the Universal Lease;

3 e. Failing to inform investors that their own funds would be used to pay
4 salesmen their commissions for selling the Universal Lease;

5 f. Failing to inform investors that their funds would be used to paid investors
6 from Kelly's previous promissory note program;

7 g. Failing to inform investors that their investment funds would be diverted to
8 other companies controlled by Kelly;

9 h. Falsely informing investors that independent, third-party management
10 companies existed which would be able to manage leasing and operations of the investments into
11 Respondents' operations;

12 i. Failing to provide information to investors as to the financial condition of
13 Respondents;

14 j. Falsely informing investors that the Universal Lease program was safe and
15 secure;

16 k. Falsely informing investors that the Universal Lease program was fully
17 insured, when at most it was the hotels operated by Respondents that had insurance, rather than the
18 program;

19 l. Failing to inform investors that a company previously operated or controlled
20 by Kelly, Yucatan Investments Corp., had orders entered against it by state securities regulators for
21 violating state securities laws;

22 m. Failing to inform investors that Yucatan-SA had an order entered against it
23 by a state securities regulator for violating state securities laws;

24 n. Failing to inform investors that Kelly had an order entered against him by a
25 state securities regulator for violating state securities laws; and

26 o. Operating a Ponzi scheme;

1 p. Failing to inform investors that the Universal Lease program was developed
2 in order to raise money to pay back investors from Kelly's previous promissory note program.

3 6. World Phantasy Tours' conduct is grounds for a cease and desist order pursuant to
4 A.R.S. § 44-2032.

5 7. World Phantasy Tours' conduct is grounds for an order of restitution pursuant to
6 A.R.S. § 44-2032.

7 8. World Phantasy Tours' conduct is grounds for administrative penalties under A.R.S. §
8 44-2036.

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