

OPEN MEETING ITEM

ORIGINAL



COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED

DATE: August 24, 2006

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

AUG 24 2006

TO ALL PARTIES:

DOCKETED BY *me*

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

YUCATAN RESORTS, INC. et al.
(TEMPORARY ORDER AND NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 5, 2006

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for Open Meeting to be held on:

SEPTEMBER 7, 2006

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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
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Cancun, Q. Roo
Mexico C.P. 77500

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

DOCKET NO. S-03539A-03-0000

DECISION NO. _____

OPINION AND ORDER

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.

14 DATES OF PRE-HEARING
15 CONFERENCES:

16 July 17, October 7, and November 12, 2003,
17 January 14, March 4, May 27, and July 29, 2005,
18 and March 28, 2005.

19 DATES OF HEARING:

20 March 29, 30, 31, April 4, 5, 6, 7, 11, 12, 13, 14,
21 21, May 16, 17, September 19 and 20, 2005, and
22 May 23, 2006.

23 PLACE OF HEARING:

24 Phoenix, Arizona

25 ADMINISTRATIVE LAW JUDGE:

26 Marc E. Stern

27 APPEARANCES: Baker & McKenzie, by
28 Mr. Joel Held and Mr. Jeffrey Gardner, on behalf
of Yucatan Resorts, Inc., Yucatan Resorts, S.A.,
Resort Holdings International, Inc., Resort
Holdings International, S.A. and Roshka,
DeWulf & Patten, by Mr. Paul J. Roshka, on
behalf of Mr. Michael Kelly¹; and

Mr. Mark Dinnell, Attorney and Assistant
Director, on behalf of the Securities Division of
the Arizona Corporation Commission;

29 **BY THE COMMISSION:**

30 On May 20, 2003, the Securities Division ("Division") of the Arizona Corporation
31 Commission ("Commission") filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of
32 Opportunity for Hearing ("Notice") against Yucatan Resorts, Inc. ("Yucatan"), Yucatan Resorts-S.A.,
33 ("Yucatan-SA"), Resort Holdings International, Inc. ("RHI"), Resort Holdings International-S.A.

34 ¹ These attorneys have been removed from the service list since they are no longer representing parties to the
35 action.

1 (“RHI-SA”), World Phantasy Tours, Inc. aka Majesty Travel, aka Viajes Majesty (“WPT”) and
2 Michael E. Kelly and Lori Kelly (“Kelly”) (collectively the “Respondents”) in which the Division
3 alleged multiple violations of the Arizona Securities Act (“Act”) in connection with the offer and sale
4 of securities in the form of investment contracts.

5 Respondents Yucatan, Yucatan-SA, RHI, RHI-SA, Mr. Kelly and WPT were duly served with
6 copies of the T.O. and notice².

7 On June 10, 2003, Respondents Yucatan, Yucatan-SA, RHI, RHI-SA, and Kelly filed requests
8 for hearing.

9 On June 23, 2003, Respondents Yucatan, Yucatan-SA, RHI, RHI-SA, and Kelly filed
10 Motions to Dismiss.

11 On July 17, 2003, the first pre-hearing conference was held with counsel for the Division,
12 Yucatan, Yucatan-SA, RHI, RHI-SA and Kelly present. Procedural and discovery matters were
13 discussed. It was decided that additional pre-hearing conferences would be necessary due to
14 numerous motions anticipated to be filed and argued.

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

17 On August 8, 2003, the Division filed a Motion to Amend the T.O. and Notice to add an
18 additional Respondent, Avalon Resorts, S.A. (“Avalon”) ³.

19 On September 12, 2003, by Procedural Order, the Motions to Dismiss were taken under
20 advisement and the Division’s Motion to Amend the T.O. and Notice was granted.

21 On May 27, 2004, at a pre-hearing conference, the Respondents and the Division appeared
22 through counsel. Discussions took place concerning when the hearing could be scheduled and when
23 the Division could provide a copy of its exhibits and witness list to Respondents. Subsequently,
24 counsel for Mr. Kelly wrote a number of letters to the parties and the presiding Administrative Law
25 Judge concerning the status of another proceeding which had previously been scheduled for hearing
26 in late October and November, 2004.

27 _____
28 ² Mrs. Kelly was not served and was subsequently dismissed from the proceeding.
³ The Division was unable to obtain service upon Avalon during the proceeding.

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

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

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

6 On July 29, 2004, at the pre-hearing conference, the Division and Respondents appeared
7 through counsel. The parties agreed upon the scheduling of the hearing which was to commence on
8 February 28, 2005. It was further agreed that the Division would provide, on October 1, 2004, to the
9 Respondents, copies of its witness list and copies of proposed exhibits. It was further agreed that
10 Respondents would provide, on December 1, 2004, to the Division, copies of their witness lists and
11 copies of proposed exhibits.

12 On July 30, 2004, by Procedural Order, the hearing was scheduled to commence on February
13 28, 2005. The parties were also ordered to exchange witness lists and copies of exhibits.

14 On February 2, 2005, the Division filed what was captioned "Securities Division's Motion to
15 Consolidate Scheduled Hearing Dates" ("Motion to Consolidate"). The Division indicated that it
16 believed that by eliminating the first scheduled week of hearing which had been scheduled to
17 commence on February 28, 2005, which was four weeks before the remaining scheduled dates of
18 hearing, that the Division could present a more concise case. The case could then commence on
19 March 28, 2005, and allow ample time for the Respondents to present their defense.

20 On February 2, 2005, counsel for WPT filed an application to withdraw as counsel for WPT
21 pursuant to E.R. 1.16(b).⁴ Counsel avowed that required deadlines and warnings had been given and
22 that he was willing to work cooperatively with WPT's substitute counsel, when selected. It was
23 indicated that WPT had not responded to the warnings of its counsel.

24 On February 4, 2005, counsel for the Division filed a letter in the Docket and indicated that
25 the other parties were amenable to the Division's Motion to Consolidate.

26 On February 7, 2005, by Procedural Order, the Division's Motion to Consolidate was granted

27 ⁴ E.R. 1.16(b) provides that counsel may withdraw if the client fails substantially to fulfill an obligation to the
28 lawyer regarding the lawyer's services and the client has been given reasonable warning that the lawyer will withdraw
unless the obligation is fulfilled.

1 and the hearing was rescheduled to commence March 28, 2005, with additional hearing dates also
2 reserved. Further, counsel for WPT was permitted to withdraw from the proceeding as requested.

3 On March 14, 2005, the Division filed what was captioned "Securities Division's Motion to
4 Allow Telephonic Testimony" ("Telephonic Motion") to allow the appearance of four Division
5 witnesses during the proceeding due to special circumstances which would prevent their actual
6 appearance at the time of the hearing.

7 On March 15, 2005, the Respondents filed a Joint Response and Objection to the Division's
8 Telephonic Motion arguing that they would be denied due process if the witnesses were not available
9 at the hearing for cross examination purposes and that their testimony would be cumulative in nature.

10 On March 17, 2005, the Division's Telephonic Motion was granted. However, to ensure a
11 smoother proceeding, on March 28, 2005, a pre-hearing conference was conducted and the beginning
12 of the evidentiary portion was set to commence on March 29, 2005.

13 On March 29, 2005, a full public hearing was convened before a duly authorized
14 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The hearing
15 continued for 16 days, concluding on May 23, 2006. The Division, Yucatan, Yucatan-SA, RHI, RHI-
16 SA and Mr. Kelly appeared with counsel. WPT did not enter an appearance during any portion of the
17 evidentiary proceeding in the administrative action⁵. At the conclusion of the hearing, the matter was
18 taken under advisement pending submission of a Recommended Opinion and Order to the
19 Commission.

20 ...
21 ...

22 _____
23 ⁵ Subsequently, after eight pre-hearing conferences and 16 days of hearing, on February 2, 2006, at Open Meeting,
24 the Commission approved the Division filing a Complaint, Consent and form of Order ("Consent Order") in the Maricopa
25 County Superior Court naming Yucatan, Yucatan-SA, RHI, RHI-SA and Mr. Kelly as Defendants. WPT was not named
26 in the court proceeding. The Consent Order resulted in a resolution of the Superior Court action and the administrative
27 proceedings herein against the name Defendants, but not WPT. Under the terms of the Consent Order, entered as a final
28 judgment on February 21, 2006, in the Maricopa County Superior Court, Case No. CV 2006-001547, as part of that
judgment, the parties agreed that no findings of fact or conclusions of law in this proceeding shall be attributable to Mr.
Kelly, Yucatan, Yucatan-SA, RHI and RHI-SA, and the Defendants further agreed and acknowledged that the Maricopa
County Superior Court would have continuing jurisdiction over enforcement of the Consent Order. On March 6, 2006,
the Division, as agreed in the Consent Order, dismissed the administrative action at the Commission against Yucatan,
Yucatan-SA, RHI, RHI-SA and Mr. Kelly, but not against WPT, the remaining Respondent in this proceeding. The
Discussion which follows above is necessary for an understanding of what transpired during the offer and sale of
securities described herein.

DISCUSSION

1
2 On May 20, 2003, the Division filed a T.O. and a Notice against Yucatan, Yucatan-SA, RHI,
3 RHI-SA, WPT and Mr. Kelly in which the Division alleged multiple violations of the Act in connection
4 with the offer and sale of securities in the form of investment contracts.

5 Respondent Michael Kelly is a married man, previously a resident of Indiana, now residing in
6 Cancun, Mexico or Panama City, Panama. Respondent Yucatan was an unincorporated entity based
7 out of South Bend, Indiana. Respondent Yucatan-SA is a foreign corporation that was registered in
8 Panama City, Panama on or about June 30, 1998. Respondent RHI, is a Nevada corporation that
9 incorporated on or about July 16, 1999. Respondent RHI-SA is a foreign corporation that was
10 registered in Panama City, Panama on or about April 16, 2002. Respondent WPT is a foreign
11 corporation that was registered in Panama City, Panama. Mr. Kelly was the founder, president and
12 owner of Yucatan and was a director, officer and owner of Yucatan-SA. Mr. Kelly is the founder,
13 chairman and owner of RHI, and is the controlling party of RHI-SA.

14 Since at least 2000, Respondents have been directly or indirectly engaged in the offer and sale
15 of securities to the general public in Arizona in the form of investment contracts as defined by A.R.S. §
16 44-1801(26). Respondents' investment contract was marketed as a Universal Lease program
17 ("Universal Lease"), in which investors were offered the opportunity to purchase 25 year leases in
18 one of various hotel properties in Cancun and Acapulco, Mexico, as well as parts of Central
19 America and have the units managed by WPT. Investors were told they would receive a fixed rate
20 return on their investment. Respondents Kelly, Yucatan and Yucatan-SA designed, marketed and
21 operated this Universal Lease during a period from approximately March 2000 through December
22 2002. Mr. Kelly, Yucatan and Yucatan-SA generated and distributed Universal Lease promotional
23 materials, recruited sales agents throughout Arizona, and performed administrative and banking
24 functions relating to the Universal Lease.
25

26 In the summer of 2002, Respondents RHI and RHI-SA began replacing Respondents
27 Yucatan and Yucatan-SA as the primary entities responsible for marketing and managing the
28 Universal Lease. In so doing, Mr. Kelly, RHI and RHI-SA generated and distributed Universal

1 Lease promotional materials, recruited sales agents throughout Arizona, and performed
2 administrative and banking functions relating to the Universal Lease. Respondents continued selling
3 the Universal Lease in Arizona until the T.O. and Notice was filed on May 20, 2003.

4 Respondents recruited sales agents throughout the United States to sell the Universal Lease
5 to investors. Mr. Kelly instructed personnel to focus on recruiting insurance agents as salesmen, as
6 insurance agents already had a book of clients to whom they could sell the investment. Investors
7 were offered the opportunity to select one of three separate Universal Lease "options." Under the
8 Universal Lease's alleged "Option 1," investors could choose to forego any returns on their
9 investments, and instead elect to utilize a timeshare unit themselves. Under this option, Respondents
10 would assign to the investor a specific unit, for a specific week, and at a specific location, and only after
11 an investment had been made. The investor would have no input into the date, quality or location of
12 this timeshare assignment. Additionally, an Option 1 purchaser was required to pay annual
13 management fees, ranging from \$380 to \$645 per year, with such amounts subject to Consumer Price
14 Index increases. This translated into an effective surcharge of at least \$9,000 to \$16,125 over the life of
15 the 25 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total payment of
16 \$14,000 to \$21,125 in return for 12 weeks of timeshare access over a 25 year period at an unknown
17 unit, at an undisclosed location, during an undisclosed time of year. No evidence was presented that a
18 single Arizona investor opted for Option 1 of the Universal Lease program or that a single Arizona
19 Universal Lease sales agent sold a Universal Lease under Option 1. One sales agent apparently chose
20 Option 1 for his own purchase.

21
22 The Universal Lease Option 2, which presented investors the opportunity to rent out assigned
23 timeshare units themselves, contained many of the same costs and conditions as that of Option 1.
24 Option 2 again required the purchaser to forego any guaranteed investment returns, and instead imposed
25 annual maintenance fees on the purchaser for the full 25 year lease term. Prospective Option 2
26 purchasers had to also await a determination by the Respondents, after the purchase had been made, as
27 to the location, resort type and permitted dates of use for the timeshare. Respondents' brochures
28 warned that this self-renting option would not bring in the same level of revenues as would a

1 professional third party servicing agent as offered in Option 3. No evidence was presented that a single
2 Arizona investor opted for Option 2 of the Universal Lease program or that a single Arizona Universal
3 Lease sales agent sold a Universal Lease under Option 2.

4 Respondents' sales literature and the sales presentation of Respondents' sales agents principally
5 discussed Option 3. According to Universal Lease promotional brochures, investors who selected
6 Option 3 would be eligible to receive a fixed 11 percent annual return on their investments for a period
7 of 25 years, after which time the lease would be renewable for another 20 years. Respondents later
8 changed the offered return to new investors from 11 % to 9%. At all times relevant, for an investor to
9 reap the 11 and later 9 percent per annum return under this Universal Lease option, the investor was
10 required, as part of his investment, to hire WPT to manage his or her investment. The selection of WPT
11 as the third party leasing agent was the only listed means under which investors could earn the
12 promised 11 or 9 percent rate of return on their Universal Lease investments. To select WPT as the
13 servicing agent, investors were instructed to complete a formal Management Agreement with the
14 company. At all times relevant, this WPT Management Agreement was bundled with the Universal
15 Lease promotional and application materials, and was the single management company identified for
16 servicing the various participating resorts. Evidence was presented at hearing that no independent third
17 party management company capable of operating under the constraints of the Universal Lease program
18 existed. Once investors had made their investments in Respondents' Universal Lease program and had
19 signed the Management Agreement with WPT, the investors were to receive an 11 and later 9 percent
20 per annum return on their investments for the life of the Universal Lease. The investors had no duties
21 or responsibilities following their investments, and only Respondents were responsible for developing
22 new units or managing existing rental units in order to generate the profits that would be paid to
23 investors.
24

25 According to Respondents and their marketing literature, Option 3 of the Universal Lease
26 provided advantages to more traditional investments. Among these was the claim that Option 3 of the
27 Universal Lease program provided a far superior rate of return than most other investments. A second
28 claim was that the Universal Lease was supported by "debt-free" resort properties, and that as a result

1 the Universal Lease program was fully safe and secure. Option 3 was also the only one of the Universal
2 Lease options that also allowed investors to recoup up to 5 percent of any liquidation penalty incurred
3 during the process of rolling other investments into the Universal Lease program. Investors testified at
4 hearing that this feature was an added incentive for them to exchange their existing investment
5 portfolios which had surrender charges into Option 3 of the Universal Lease Program. All evidence
6 presented at hearing showed that Arizona investors involved in the Universal Lease program chose
7 Option 3, the investment option, and that all sales by Arizona Universal Lease sales agents were for
8 Option 3.

9 Although Respondents and their sales agents distributed company brochures and promotional
10 materials to prospective Universal Lease investors, these investors were never apprised as to the
11 financial condition of Respondents, were never informed as to the distribution and uses of Universal
12 Lease investment funds, and were never given financial statements reflecting the financial condition
13 of any of the Respondents. Universal Lease sales agents received commissions reaching upwards of
14 20 percent for investments made in the Universal Lease program under Option 3. These commissions
15 were subject to increases in instances where agents qualified for bonuses and/or sales overrides.
16 Universal Lease investors were not informed about the existence of these commissions or their
17 amounts. The safety and security of investments in the Universal Lease were also routinely described
18 as having full insurance. Such claims were misleading in that, although some of the resorts underlying
19 the Universal Lease program may have had some form of casualty insurance, the Universal Lease
20 program itself did not.

21 Under the terms of the Universal Lease program, investors were required to invest a
22 minimum of \$5,000 dollars, but they were allowed to invest any amount in excess of that sum.
23 Investment funds were made payable to Yucatan or Yucatan-SA and, subsequently, to RHI or RHI-
24 SA. Prospective investors were given the option to roll part or all of their IRA portfolios into the
25 Universal Lease program. In doing so, investors were effectively replacing their existing retirement
26 savings with the Universal Lease timeshare program. The Universal Lease application contained a
27 specific form to facilitate the transfer of investors' retirement portfolios into Respondents'
28

1 investment program. Although Respondents described WPT as an independent, third party
2 management company, the evidence presented showed that Mr. Kelly had purchased WPT in early
3 1999. At the time, WPT was just a travel agency in Panama City, with only two or three employees.
4 Mr. Kelly also told at least two individuals that he owned or controlled WPT. Respondents failed to
5 disclose these facts to investors. During the time period of 2001 to 2002, the officers and directors of
6 Respondents Yucatan-SA and RHI-SA were also acting as officers and directors of WPT. Respondents
7 failed to disclose these facts to investors.

8 428 Arizona investors purchased 591 Universal Leases from Respondents for an investment
9 total of \$26,727,622.35. \$3,668,455.46 was refunded to investors. The net investment by Arizona
10 investors was \$23,059,166.89. All 591 Arizona Universal Leases listed WPT as the third party leasing
11 agent. During the period from February 11, 2000, to October 31, 2003, Respondents deposited
12 Universal Lease investment funds into a bank account in the name of Yucatan Resorts at the
13 National City Bank of Indiana, where they were pooled with other investors' funds. Of the
14 \$174,353,811 that Respondents deposited into the account, \$161,064,574, or 92% came from
15 investors. Respondents directly paid investors \$31,531,470 from the funds in that account. The
16 money that investors received in payment from that account came from other investors. Evidence
17 was presented at hearing that checks were received by investors from this account with the name of
18 WPT on the check, despite the fact that the account was in the name of Yucatan Resorts. Mr. Kelly
19 was a signator on the account. Respondents failed to disclose these facts to investors. Respondents
20 paid \$22,326,366 from that account in commissions to sales agents. Respondents paid \$71,802,663
21 from that account to other entities, some of which were controlled by Mr. Kelly, including Yucatan
22 Investments Corp. ("Yucatan Investments")⁶.

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26 ⁶ Yucatan Investments was the immediate predecessor to Respondents' current Universal Lease program.
27 Respondent Michael Kelly was the sole incorporator, statutory agent, president and secretary of Yucatan Investments,
28 which was based out of the same business address as Respondents Yucatan, Yucatan-SA, RHI and RHI-SA. Evidence
was presented that one reason Mr. Kelly helped create the Universal Lease program was to pay back investors in the
Yucatan Investments promissory note program, an earlier unregistered offering. Respondents failed to disclose these
facts to investors.

1 During the period of April 19, 2002, to May 20, 2003, Respondents deposited Universal
2 Lease investment funds into a bank account in the name of Resort Holdings International Lease
3 Account at the National City Bank of Indiana, where they were pooled with other investors' funds.
4 Of the \$130,703,929 that Respondents deposited into the account, \$128,993,118, or 99% came from
5 investors. Respondents failed to disclose these facts to investors. Respondents paid \$23,523,128
6 from that account directly to sales agents as commissions, while \$39,614,453 went to other entities,
7 some of which were controlled by Mr. Kelly. Respondents failed to disclose these facts to investors.
8 Respondents wired \$15,300,000 from that National City Bank account to an account at First Bank of
9 Miami in the name of WPT. A total of \$15,315,252 was deposited to that account. Of that amount,
10 \$14,258,949 was paid to investors. Evidence was presented by an expert witness that 99% of the
11 money in the RHI National City Bank account came from investors and that 99.9% of the money in
12 the WPT's First Bank of Miami account came from the RHI National City Bank account. The
13 \$14,258,949 which was paid to investors from the WPT's First Bank of Miami account was money
14 received from investors. Respondents failed to disclose these facts to investors.

15 Yucatan Investments was the subject of an administrative order by the New Mexico Securities
16 Division on May 18, 1999, for the sale of unregistered, non-exempt securities in the form of 9 month
17 promissory notes by unlicensed sales agents. Yucatan Investments was the subject of an administrative
18 order by the South Carolina Securities Division on July 26, 1999, for the sale of unregistered,
19 nonexempt securities in the form of 9 month promissory notes by unregistered sales agents. Yucatan
20 Investments was the subject of a Cease and Desist Order by the Minnesota Department of Commerce
21 on October 4, 1999, for the sale of unregistered, nonexempt securities. Respondent Kelly, as the
22 company's president, consented to the Minnesota Order on September 15, 1999. Yucatan Investments
23 was the subject of an administrative order by the Connecticut Department of Banking, on November 7,
24 2000, for the sale of unregistered, nonexempt securities in the form of promissory notes by unlicensed
25 sales agents.
26

27 Respondents Michael Kelly and Yucatan-SA were the subject of an administrative order issued
28 by the Wisconsin Securities Division on March 28, 2001, for the fraudulent sale of unregistered

1 securities by an unlicensed sales agent in violation of Wisconsin law. Yucatan-SA was the subject of
2 an administrative cease and desist order on October 28, 2002, by the Pennsylvania Securities
3 Commission arising out of multiple registration and fraud violations as proscribed by the Pennsylvania
4 Securities Act. The Universal Lease program was developed by Respondents in order to pay back the
5 investors who purchased promissory notes from Yucatan Investments. At the time that Respondents
6 began selling the Universal Lease program, they had not created a plan that would allow them to repay
7 investors. Evidence was presented that salesmen did not inform Arizona investors that Yucatan
8 Investments, Yucatan, Yucatan-SA, and Mr. Kelly had been the subject of previous sanctions based on
9 multiple violations of various states' securities laws. Despite repeated marketing claims that the
10 Universal Lease program was safe and guaranteed, investors testified that they had not received their
11 interest payments which were due on their Universal Lease investments.

FINDINGS OF FACT

13 1. WPT failed to appear and present any evidence during the evidentiary portion of the
14 proceeding.

15 2. WPT offered or sold securities in the form of investment contracts within or from
16 Arizona that were neither registered nor exempt from registration.

17 3. WPT offered and sold securities while neither registered as a dealer or salesman nor
18 exempt from registration.

19 4. WPT offered and sold securities by directly or indirectly (a) employing a device,
20 scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts,
21 or (c) engaging in transactions, practices or courses of business which operate or would operate as a
22 fraud or deceit in the following manner:

23 a. Falsely informing investors that WPT was a separate, independent company,
24 when in fact it was controlled by Mr. Kelly;

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

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

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

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

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

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

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

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

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

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

19 l. Failing to inform investors that a company previously operated or controlled by
20 Mr. Kelly, Yucatan Investments, 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 by a
23 state securities regulator for violating state securities laws;

24 n. Failing to inform investors that Mr. 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;

27
28

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

3 5. WPT's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

4 6. WPT's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

5 7. WPT's conduct is grounds for administrative penalties pursuant A.R.S. § 44-2036.

6 **CONCLUSIONS OF LAW**

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

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

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

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

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

19 a. Falsely informing investors that WPT was a separate, independent company, when
20 in fact it was controlled by Mr. Kelly;

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

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

25 d. Failing to inform investors that commissions of up to 20% would be paid to
26 salesmen for selling the Universal Lease;
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1 e. Failing to inform investors that their own funds would be used to pay salesmen
2 their commissions for selling the Universal Lease;

3 f. Failing to inform investors that their funds would be used to pay investors from
4 Mr. Kelly's previous promissory note program;

5 g. Failing to inform investors that their investment funds would be diverted to other
6 companies controlled by Mr. Kelly;

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

10 i. Failing to provide information to investors as to the financial condition of
11 Respondents;

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

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

15 l. Failing to inform investors that a company previously operated or controlled by
16 Mr. Kelly, Yucatan Investments, had orders entered against it by state securities regulators for
17 violating state securities laws;

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

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

22 o. Operating a Ponzi scheme;

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

25 6. WPT's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

26 7. WPT's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

27 8. WPT's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

ORDER

1
2 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
3 under A.R.S. §44-2032, Respondent World Phantasy Tours, Inc., aka Majesty Travel, aka Viajes
4 Majesty shall cease and desist from its actions described hereinabove in violation of A.R.S. §§44-
5 1841, 1842 and 1991.

6 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
7 A.R.S. §44-2036, Respondent World Phantasy Tours, Inc., aka Majesty Travel, aka Viajes Majesty
8 shall pay as and for administrative penalties: for the violation of A.R.S. §44-1841, the sum of
9 \$25,000; for the violation of A.R.S. §44-1842, the sum of \$25,000; and for the violation of A.R.S.
10 §44-1991, the sum of \$50,000, for a total of \$100,000.

11 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
12 A.R.S. §44-2036, that Respondent World Phantasy Tours, Inc., aka Majesty Travel, aka Viajes
13 Majesty shall pay the administrative penalty ordered hereinabove in the amount of \$100,000 payable
14 by either cashier's check or money order payable to the "State of Arizona", and present it to the
15 Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

16 IT IS FURTHER ORDERED that if Respondent World Phantasy Tours, Inc., aka Majesty
17 Travel, aka Viajes Majesty fails to pay the administrative penalty ordered hereinabove, any
18 outstanding balance plus interest at the maximum lawful amount may be deemed in default and shall
19 be immediately due and payable, without further notice.

20 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
21 A.R.S. §44-2032, Respondent World Phantasy Tours, Inc., aka Majesty Travel, aka Viajes Majesty,
22 jointly and severally, shall make restitution in an amount not to exceed \$23,059,167 which restitution
23 shall be made pursuant to A.A.C. R14-4-308, subject to legal set-offs by the Respondents and
24 confirmed by the Director of Securities, said restitution to be made within 60 days of the effective
25 date of this Decision.

26 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
27 rate of ten percent per year for the period from the dates of investment to the date of payment of
28 restitution by the Respondents.

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IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be deposited into an interest-bearing account(s) if appropriate, until distributions are made.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN _____ COMMISSIONER _____

COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR:

YUCATAN RESORTS, INC. et al.

2 DOCKET NO.:

S-03539A-03-0000

3 Gabriel Humberto Escalante Torres
4 World Phantasy Tours, Inc.
5 Avenida Coba, No. 82, SM 3, Lote 10
3er Piso Cancun, Q. Roo
Mexico 77500

6 Matt Neubert, Director
7 Securities Division
8 1300 West Washington
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