

ORIGINAL NEW APPLICATION
NEW



0000061443

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

COMMISSIONERS

OCT 17 2006

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

DOCKETED BY

WLL

In the matter of:

DOCKET NO. S-20483A-06-0661

JOHN EDWARD TENCZA and CHRISTINE M. TENCZA, husband and wife
2741 West Piazza Drive
Meridian, Idaho 83642

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES, AND FOR OTHER
AFFIRMATIVE ACTION

AMERICAN ELDER GROUP, L.L.C., an
Arizona limited liability company
7779 East Nestling Way
Scottsdale, Arizona 85255

AMERICAN ELDER GROUP, INC., a Nevada
corporation fka American Investment
Management Group, Inc., a Nevada corporation
2050 Russett Way
Carson City, Nevada 89703

PHILLIP ROBERT OHST and MARY
ELIZABETH OHST, husband and wife
1837 West Claremont Street
Phoenix, Arizona 85015

GREGORY GRANT GROH and GAIL A.
GROH, husband and wife,
5237 East Michelle Drive
Scottsdale, Arizona 85254

Respondents.

AZ CORP COMMISSION
DOCUMENT CONTROL

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission
("Commission") alleges that Respondents have engaged in and/or aided and abetted acts, practices

1 and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et*
2 *seq.* ("Securities Act").

3 The Division also alleges JOHN EDWARD TENCZA ("TENCZA") as a person controlling
4 AMERICAN ELDER GROUP, L.L.C. ("AEG L.L.C.") and AMERICAN ELDER GROUP, INC.
5 ("AEG, INC.") within the meaning of A.R.S. §44-1999, so that he is jointly and severally liable under
6 A.R.S. §44-1999 to the same extent as AEG, L.L.C. and AEG, INC. for violations of the Securities
7 Act.

8 The Division further alleges as follows:

9 **I. JURISDICTION**

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

12 **II. RESPONDENTS**

13 2. At all times material hereto, TENCZA was a resident of Arizona and was licensed to sell
14 insurance in the State of Arizona, but was not registered as a securities salesperson.

15 3. At all times material hereto, TENCZA was the founder, sole member, manager, president
16 and a controlling person of AEG, L.L.C. and the founder, manager, president, secretary, treasurer,
17 director and a controlling person of AEG, INC.

18 4. At all times material hereto, TENCZA was married to CHRISTINE M. TENCZA. All
19 action taken by TENCZA was in furtherance of and for the benefit of the marital community of
20 JOHN EDWARD TENCZA and CHRISTINE M. TENCZA. CHRISTINE M. TENCZA therefore
21 is joined in this action, pursuant to A.R.S. §44-2031(C), to determine the liability of the marital
22 community for the violations alleged herein.

23 5. AEG, L.L.C. is an Arizona limited liability company formed in 2000 with at least one
24 office in Arizona through which it has transacted business within and from Arizona.

1 6. AEG, INC., formerly known as American Investment Management Group, Inc., is a
2 Nevada corporation with at least one office in Arizona through which it has transacted business
3 within and from Arizona.

4 7. "AEG" hereafter refers to AEG, L.L.C. and AEG, INC. collectively.

5 8. PHILLIP ROBERT OHST ("OHST") at all times material hereto was a resident of
6 Arizona and was licensed to sell insurance in the State of Arizona, but was not registered as a
7 securities salesperson.

8 9. At all times material hereto, OHST was married to MARY ELIZABETH OHST. All
9 action taken by OHST was in furtherance of and for the benefit of the marital community of
10 PHILLIP ROBERT OHST and MARY ELIZABETH OHST. MARY ELIZABETH OHST
11 therefore is joined in this action, pursuant to A.R.S. §44-2031(C), to determine the liability of the
12 marital community for the violations alleged herein.

13 EUO testimony of Ohst – pg. 25

14 10. GREGORY GRANT GROH ("GROH") at all times material hereto was a resident of
15 Arizona and was not registered as a securities salesperson.

16 11. At all times material hereto, GROH was a licensed attorney in the State of Arizona who
17 practiced law as Gregory G. Groh, J.D., LL.M., organized as a sole proprietorship.

18 12. At all times material hereto, GROH was married to GAIL A. GROH. All action taken by
19 GROH was in furtherance of and for the benefit of the marital community of GREGORY GRANT
20 GROH and GAIL A. GROH. GAIL A. GROH therefore is joined in this action, pursuant to A.R.S.
21 §44-2031(C), to determine the liability of the marital community for the violations alleged herein.

22 **III. FACTS**

23 **A. Sales of insurance products**

24 13. TENCZA and GROH met in or around 1996 while both were working with American Estate
25 Services.

1 14. GROH possessed files that included contact information for approximately 1,400 clients for
2 whom he had written and/or reviewed trust documents while working with companies such as
3 American Estate Services and Liberty Estate Management.

4 15. In 2000, TENCZA approached GROH seeking permission to offer annuities and other
5 insurance products to GROH's clients. TENCZA and GROH reached an agreement that authorized
6 TENCZA to travel to the homes of GROH's clients to review their trust documents to determine
7 whether any trust work needed to be completed.

8 16. In exchange for the review services provided by TENCZA, GROH authorized TENCZA to
9 offer annuities and other insurance products to GROH's clients.

10 17. Pursuant to his agreement with GROH, TENCZA, through AEG, traveled to the homes of
11 GROH's clients and reviewed their trust documents.

12 18. After reviewing the trust, TENCZA offered and sold annuities and other insurance products
13 to several of GROH's clients.

14 19. Sales of annuities and other insurance products to GROH's clients by TENCZA continued up
15 to approximately May 2001.

16 **B. Annuity Rescue Program**

17 20. In or around May 2001, TENCZA approached GROH with the idea of presenting the
18 Universal lease timeshare program ("Universal lease") to GROH's clients who TENCZA thought
19 were unhappy with the annuities they owned.

20 21. In or around May 2001, GROH and TENCZA modified their initial agreement to allow
21 TENCZA and other AEG salesmen to travel to the homes of the GROH's clients to review their
22 trusts, but instead of offering annuities and other insurance products GROH authorized TENCZA to
23 offer the Universal lease to GROH's clients.

24 22. The Universal lease was designed, promoted and operated by Yucatan Resorts, Inc.
25 ("Yucatan"), along with Yucatan Resorts, S.A. ("Yucatan-S.A.") and involved investments in hotel
26

1 units in Cancun, Mexico and other Central American locales from approximately March 2000 to
2 December 2002.

3 23. Resort Holdings International, Inc. ("RHI") and Resort Holding International, S.A. ("RHI-
4 S.A.") began replacing Yucatan as the primary promoter and operator of the Universal lease
5 timeshare program within the State of Arizona in or around May 2002.

6 24. GROH and TENCZA's agreement as it related to the offer and sale of the Universal lease to
7 GROH's clients was described to at least one prospective investor as the "annuity rescue program"
8 ("rescue program").

9 25. Although TENCZA informed at least one investor that the Universal lease was only being
10 offered to investors who wanted to get out of an annuity, the Universal lease was actually sold to
11 several investors who either did not own annuities or did not surrender an annuity in order to
12 purchase the Universal lease.

13 26. As part of GROH's agreement with TENCZA to allow the presentation of annuities and the
14 Universal lease to GROH's clients, beginning in 2000 and continuing through at least June 2002, a
15 form letter ("the letter") was mailed to all of the approximately 1,400 trust clients for whom GROH
16 possessed contact information.

17 27. The letter was printed on GROH's letterhead and included his signature.

18 28. GROH never considered the suitability of the Universal lease for any of his clients, most of
19 whom were elderly, prior to the mailing of the letter.

20 29. The letter to GROH's clients alleged that his office had "received numerous calls, as well as
21 documented reports, concerning issues that may impact the legal effectiveness of your Trust."
22 Claiming to be the attorney who had reviewed the clients' Living Trust when the client had first
23 implemented their Estate Plan, the letter expressed "concern for your security" as the basis for
24 writing a "very important" letter.

1 30. The letter referenced that critical pages from the clients' trusts had been removed by
2 individuals who were not affiliated with GROH's office.

3 31. The letter urged clients to call the "client services line" at 480-477-6777 or 1-888-579-1643
4 to arrange for an appointment with a "paralegal" from GROH's office who would meet the client in
5 their home to review their trust documents. According to the letter, there would be no charge for the
6 review service.

7 32. The telephone numbers set forth in the body of the letter to his clients did not connect to his
8 law office, but instead were telephone numbers for AEG offices that were staffed with AEG
9 representatives who answered the phones.

10 33. GROH failed to inform his clients that the telephone numbers he was directing them to call
11 did not connect to his office.

12 34. According to GROH, nearly 600 of his clients responded to the letter by calling to make an
13 appointment to have their trusts reviewed.

14 35. With the knowledge and consent of GROH, AEG salesmen spoke to several of GROH's
15 clients about the Universal lease.

16 36. The letter failed to inform GROH's clients that the "paralegals" from his office, who GROH
17 did not consider to be employed by him, were licensed insurance salesmen who would be attempting
18 to sell the Universal lease.

19 37. The letter concluded by setting forth that if the client declined the offer or did not respond,
20 GROH would consider the attorney-client relationship to be terminated.

21 38. According to GROH, he did not terminate any attorney/client relationship for those clients
22 who either did not respond to the letter or declined the offer to have their trusts reviewed.

23 39. GROH retained possession of the clients' files that did not respond to the letter or declined
24 the offer to have their trusts reviewed.

1 40. For clients who responded to the letter from GROH, an appointment was set for an AEG
2 salesman to travel to the home of the client to meet with them to review their trust documents.

3 41. GROH failed to supervise or monitor the AEG representatives who were responsible for
4 scheduling appointments or the sales activities of the AEG salesmen.

5 42. GROH failed to inform his clients that he was not supervising or monitoring the activities of
6 the "paralegals" from his office that were traveling to the homes of his clients.

7 43. According to GROH, he considered AEG salesmen to be paralegals from his office, but did
8 not compensate them for any of the work they performed and did not consider them to be employees.

9 44. GROH failed to inform his clients that he did not consider the "paralegals" from his office to
10 be his employees.

11 45. AEG salesmen had not received any formal training as paralegals or worked for GROH in a
12 paralegal or legal assistant capacity prior to meeting with GROH's clients.

13 46. According to GROH, the AEG salesmen who were sent to meet with GROH's clients were
14 designated as paralegals, in part, so that clients would feel confident that the individuals coming to
15 their homes were qualified to review documents.

16 47. GROH copied his letterhead onto AEG computers and authorized the use of his letterhead by
17 AEG to correspond with GROH's clients.

18 48. When meeting with GROH's clients, AEG salesmen presented business cards that included
19 the name of GROH's law office and the salesmen.

20 49. The telephone numbers printed on the business cards connected to the offices of AEG.

21 50. When meeting with GROH's clients, at least one AEG salesman utilized a badge that
22 included his picture and identified him as someone from GROH's law office.

23 51. According to GROH, the purpose in allowing AEG to utilize letterhead and business cards
24 with the name of GROH's law office on them was to draw a distinction between insurance sales
25 people and the "paralegals" from GROH's law office.

1 52. According to GROH, he did not attend any of the in-home appointments set up between his
2 clients and AEG salesmen.

3 53. AEG representatives and salesmen did not work out of GROH's law office.

4 54. The review of client trust documents by AEG salesmen included reviewing the assets of
5 GROH's clients so that a determination could be made with regard to whether the assets were titled
6 in the name of the trust.

7 55. Pursuant to the terms of the agreement between GROH and TENCZA, GROH was
8 responsible for drafting modifications to the trust documents, if any, such as powers of attorney or
9 living wills, and providing the new documents to AEG who would deliver and notarize the
10 documents to clients.

11 56. According to GROH, approximately one fourth of the trusts reviewed required some work
12 such as replacing missing pages or updating the power of attorney and living will.

13 57. GROH authorized AEG to disclose to clients that GROH himself had purchased a Universal
14 lease.

15 58. According to GROH, knowledge that he had purchased a Universal lease was important to
16 some of his clients.

17 59. The amount of GROH's Universal lease investment was \$5,000, the minimum amount
18 permitted under the terms of the Universal lease program.

19 60. AEG salesmen failed to inform GROH's clients of the amount of GROH's investment in the
20 Universal lease.

21 61. GROH and OHST had met in or around 1998 while both were working with Liberty Estate
22 Management.

23 62. According to OHST, he was contacted by GROH and invited to discuss with GROH and
24 TENCZA whether OHST was interested in reviewing trusts of GROH's clients and presenting the
25 Universal lease.
26

1 63. In 2001, OHST attended a meeting with GROH and TENCZA wherein GROH explained the
2 Universal lease.

3 64. According to OHST, both TENCZA and GROH assured OHST that they had done their own
4 due diligence on the Universal lease and felt it was a safe investment.

5 65. OHST agreed to assist GROH and TENCZA, through AEG, in the review of trusts and
6 presentation of the Universal lease.

7 66. OHST informed at least one investor that GROH had "put his stamp of approval" on the
8 Universal lease.

9 67. Some time later, TENCZA recruited at least one additional insurance salesman, John
10 Donovan ("Donovan"), to review trusts and present the Universal lease.

11 68. According to Donovan, GROH explained to him the Universal lease and the due diligence
12 that had been completed by TENCZA and GROH.

13 69. AEG salesmen sold the Universal lease contract to over one hundred investors including
14 several of GROH's clients.

15 **C. Commission structure**

16 70. On December 14, 2000, TENCZA through AEG, L.L.C. executed a Sales Representative
17 Marketing Agreement ("Marketing Agreement") with Yucatan Resorts, S.A. that authorized the sale
18 of the Universal lease by AEG, L.L.C.

19 71. According to TENCZA, he did not begin selling the Universal lease until approximately June
20 2001.

21 72. After December 14, 2000, AEG, INC. through TENCZA also executed a Marketing
22 Agreement that authorized the sale of the Universal lease by AEG, INC.

23 73. According to TENCZA, AEG received commissions of 10-15% on all sales of the Universal
24 lease by AEG salesmen.

1 74. On January 10, 2002, OHST signed a Marketing Agreement with Yucatan Resorts, S.A. that
2 authorized him to sell the Universal lease.

3 75. On January 31, 2002, OHST and AEG, through TENCZA, executed an Assignment of
4 Commission that required all commissions on OHST's sales of the Universal lease be paid to AEG.

5 76. AEG paid OHST commissions of 3-4% on all sales made by OHST of the Universal lease.

6 77. According to TENCZA and GROH, unless GROH's client purchased the Universal lease,
7 GROH received no compensation for his time, if any, spent corresponding with or drafting trust
8 documents for a client who had met with an AEG salesman.

9 78. According to GROH, in the event a Universal lease was purchased by one of his clients, he
10 received approximately forty percent (40%) of the amount of commission received by AEG.

11 79. According to TENCZA, in the event a Universal lease was purchased through AEG by one of
12 GROH's clients, GROH was paid a commission equal to approximately 3-4% of the Universal lease
13 sales price.

14 80. TENCZA did not inform GROH or any AEG salesmen that TENCZA's commission amount
15 on each sale of the Universal lease gradually increased from 10 to 15 percent.

16 81. GROH received a commission on any sale of the Universal lease to his clients,
17 notwithstanding whether or not he had expended any time reviewing, modifying or drafting trust
18 documents for the client who was purchasing the Universal lease.

19 82. Internal Revenue Service 1099 forms received by GROH from AEG indicate that AEG paid
20 GROH commissions of \$98,418.64 for 2001 and \$166,065.20 for 2002.

21 83. AEG paid GROH commissions on sales of the Universal lease of at least \$95,000 for 2003.

22 84. According to GROH, the amount paid to him by AEG for 2001 represented commissions on
23 sales made by AEG of annuities and the Universal lease to GROH's clients.

24 85. According to GROH, after approximately May 2001, all amounts paid to him by AEG
25 represented commissions on sales of the Universal lease to GROH's clients by AEG.

1 86. According to GROH, the amounts paid to him by AEG in 2001, 2002 and 2003 represented
2 66-80% of his total annual income for those years.

3 87. GROH failed to communicate directly with at least one of his clients that he would receive a
4 commission on each sale of the Universal lease to his clients.

5 88. GROH failed to confirm with at least one of his clients whether AEG salesmen had disclosed
6 that GROH and the salesmen would receive a commission on each sale of the Universal lease.

7 89. GROH failed to inquire of his clients whether AEG salesmen were making any distinction
8 between the review services provided by the "paralegals" from GROH's law office as opposed to the
9 presentation and sale of the Universal lease by AEG salesmen.

10 90. The facts as set forth herein establish that GROH not only aided and abetted the securities
11 fraud being perpetrated on investors but in fact participated, directly or indirectly, in that fraud.

12 **D. Universal lease program**

13 91. Under the terms of the Universal lease program, investors were required to invest a minimum
14 of \$5,000, but were allowed to invest any amount in excess of that sum.

15 92. The Universal lease promotional materials presented investors with the opportunity to select
16 one of three separate Universal lease "options."

17 93. Under "Option 1" of the Universal lease, investors could choose to forego any returns on
18 their investments, and instead elect to utilize a timeshare unit themselves. Pursuant to this option, an
19 investor would be assigned a specific unit, for a specific week, and at a specific location, and only
20 after a minimum investment of \$5,000 had been paid. The investor had no input as to the date,
21 quality or location of the timeshare assignment. Additionally, an Option 1 purchaser was required to
22 pay annual management fees, ranging from \$380 to \$645 per year with said amounts subject to
23 increases in the Consumer Price Index. The amounts to be charged for annual management fees
24 resulted in an effective surcharge of \$9,000 to \$16,125 (or more) over the life of the 25 year
25 timeshare lease.

26

1 94. Option 1 was minimally included in the Universal lease promotional materials, and the
2 selection received little or no coverage in Universal lease recruitment seminars for prospective
3 salespeople. Option 1 had little or no applicability to the many elderly investors placing retirement
4 funds into the Universal lease program.

5 95. The Universal lease "Option 2," presented investors the opportunity to rent out assigned
6 timeshare units themselves and contained many of the same prohibitive costs and conditions
7 associated with Option 1. Option 2 again required the purchaser to forego any guaranteed investment
8 returns, and instead imposed substantial annual maintenance fees on the purchaser for the full 25 year
9 lease term. Prospective Option 2 purchasers were unaware, until after the purchase had been made,
10 of the location, resort type and permitted dates of use for the timeshare. Sales material warned that
11 this self-renting option would not bring in the same level of revenues as would a professional third
12 party servicing agent as offered in Option 3. Promotional materials provided a discussion of the
13 financial disincentives, but no discussion, comments or guidance of the advantages of selecting
14 option 2, other than the brief suggestion that the self-renting option could be carried out through the
15 "placing of an advertisement in the local paper."

16 96. Sales and promotional materials focused on and emphasized Option 3. According to
17 Universal lease promotional brochures, investors who chose Option 3 would be eligible to receive a
18 guaranteed 11 percent (subsequently lowered to 9 percent) annual return on their timeshare
19 investments for a period of 25 years, after which time the lease could be renewed for another 20
20 years. For an investor to reap the 11 and later 9 percent per annum return under Option 3, the
21 investor was required, as part of the investment, to hire a "third party" management company to lease
22 the investor's timeshare unit.

23 97. The Universal lease materials identified World Phantasy Tours, Inc., ("World Phantasy"), as
24 the designated third party management company responsible for leasing the investors' timeshare unit.

1 World Phantasy was alleged to be a resort management company and travel agency operating as the
2 servicing agent for the Yucatan Universal lease program.

3 98. Selecting World Phantasy, the only management company identified or offered, as the leasing
4 agent was the only method under which investors could earn the promised 11 or 9 percent rate of
5 return on their Universal lease for the life of the Universal lease.

6 99. The investors had no duties or responsibilities following their investments, and relied solely
7 on others for development of new units and/or management of existing rental units to generate the
8 rental profits that would purportedly support the investors' investment returns.

9 100. According to the marketing materials for the Universal lease, Option 3 of the Universal
10 lease provided a multitude of advantages to more traditional investments. Among them was the
11 assertion that Option 3 provided a superior rate of return over most other investments and that the
12 Universal lease was supported by "debt-free" resort properties that resulted in the Universal lease
13 program being "safe and secure."

14 101. Option 3 was also the only Universal lease option that enabled investors to recoup up to 5
15 percent of any liquidation penalty incurred during the process of rolling other investments into the
16 Universal lease program. This feature was an added incentive for investors to exchange their
17 existing investment portfolios, including individual retirement accounts and annuities, into Option 3
18 of the Universal lease program.

19 102. TENCZA, AEG, OHST AND GROH, directly or indirectly, entered into agreements with
20 Yucatan Resorts, *et al.* and/or Resort Holding International, *et al.*, which authorized AEG salesmen
21 to market and sell investment contracts in the form of leases in the Universal lease program within or
22 from the State of Arizona.

23 103. All investors who purchased contracts through AEG selected Option 3.
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1 104. TENCZA failed to present and discuss all three options with at least one investor and
2 informed at least one prospective investor that Option 3 was the only option being offered to
3 investors by AEG.

4 105. TENCZA and OHST informed at least one prospective investor that the rate of return on the
5 Universal lease was contractually guaranteed and that the properties were debt free.

6 106. TENCZA informed prospective investors that the properties and/or owners of the properties
7 being leased were fully insured.

8 107. Claims that the properties and/or owners of the properties being leased were fully insured
9 were misleading in that the Universal lease itself was not insured.

10 108. TENCZA informed at least one investor that the monies being invested were being used to
11 purchase additional properties.

12 109. AEG informed prospective investors that they could cash in after three years with no
13 penalty.

14 110. TENCZA informed prospective investors that the contractually guaranteed 9% return would
15 be paid from rental income received on the properties.

16 111. TENCZA and OHST informed prospective investors that their principal would always be
17 protected because the properties were debt free which resulted in investors being in the "first lien
18 position."

19 112. TENCZA told prospective investors that the Universal lease was safe and secure, telling at
20 least one investor during a sales presentation and while referring to the Universal lease, "I've said
21 safe twenty times already, you know."

22 113. TENCZA explained to at least one prospective investor how strongly both AEG and GROH
23 felt about the safety of the Universal lease by indicating that GROH would not risk his law license
24 unless he was comfortable with the Universal lease.

114. AEG, through its agents and representatives, sold hundreds of Universal leases to individuals or entities within or from the State of Arizona from 2001-2003. In several instances, AEG sold multiple leases to the same individual.

115. TENCZA and OHST informed at least one prospective investor that the necessary due diligence, research and checking had been completed by both TENCZA and GROH.

116. TENCZA told one prospective investor that TENCZA himself had invested his retirement in the Universal lease, but TENCZA failed to inform the investor of the amount of his Universal lease investment.

117. TENCZA emphasized to at least one prospective investor the financial strength of Yucatan Resorts and Resort Holdings and described the companies as having "deep pockets."

118. TENCZA told at least one prospective investor that the commission paid to AEG did not come from investor funds or the rental income, but rather that the company (Yucatan) paid AEG.

119. Prior to and during the period of sales to investors in Arizona by AEG, Yucatan and its related entities had been subject to investigations and orders in multiple states involving its development, marketing and sale of promissory notes and Universal leases. Despite knowledge that several states had initiated investigations related to Yucatan and its predecessors for possible securities violations, TENCZA, OHST and GROH failed to disclose this information to most, if not all, of the prospective investors with whom they dealt.

120. The orders that TENCZA, OHST and GROH could have revealed to investors include:

a) May 18, 1999 administrative order by the New Mexico Securities Division related to Yucatan Investment Corp. for the sale of unregistered, non-exempt securities – in the form of 9 month promissory notes – through unlicensed sales agents. Michael Eugene Kelly ("Kelly") was the sole incorporator, statutory agent, president and secretary of Yucatan Investments, and Yucatan Investment was based out of the same business address as Yucatan, Yucatan-S.A., RHI, and RHI-S.A. Yucatan Investments' operation was the immediate predecessor to the current Universal lease

1 program; Kelly was the founder, president and owner of Yucatan and was a director, officer and
2 owner of Yucatan S.A. Kelly is the founder, chairman and owner of RHI.

3 b) July 26, 1999, Consent with the South Carolina Securities Division signed by Kelly on
4 behalf of himself and Yucatan Investment Corp. for the sale of unregistered, nonexempt securities in
5 the form of 9 month promissory notes through unregistered sales agents;

6 c) October 4, 1999, Consent Order to Cease and Desist with the Minnesota Department of
7 Commerce signed by Kelly as president for the sale of unregistered, nonexempt securities;

8 d) November 7, 2000, Order to Cease and Desist, that became permanent on December 21,
9 2000, by the Connecticut Department of Banking related to Yucatan Investment Corp. for the sale of
10 unregistered, nonexempt securities in the form of promissory notes through unlicensed sales agents;

11 e) March 28, 2001, Order of Prohibition and Revocation by the Wisconsin Securities
12 Division related to Kelly, Yucatan Resorts, Inc., Yucatan Resorts, S.A., RHI, Inc. and RHI-S.A. for
13 the sale of unregistered securities by unlicensed sales agents and for securities fraud in violation of
14 Wisconsin law (revoked by subsequent order dated April 4, 2003);

15 f) October 22, 2002, Summary Order to Cease and Desist from the Pennsylvania Securities
16 Commission related to Yucatan-S.A. arising out of multiple registration and fraud violations as
17 prescribed by the Pennsylvania Securities Act (rescinded by subsequent order dated January 20,
18 2004);

19 g) On May 20, 2003, the Division issued a Temporary Order to Cease and Desist and Notice
20 of Opportunity for Hearing ("Order") regarding Yucatan Resorts, Yucatan Resorts S.A., RHI, RHI-
21 S.A., World Phantasy, Majesty Travel and Kelly.

22 121. As a result of TENCZA's ownership of and membership in AEG, he was responsible for
23 key activities of AEG including recruitment, retention and training of AEG employees including
24 sales agents, management of sales activities and compensation of AEG employees and salesmen.
25 TENCZA, as the owner of AEG, had a financial stake in all sales of the Universal lease made by
26

1 AEG salesmen. At all times material hereto, TENCZA performed his duties as owner and
2 member and thereby controlled AEG.

3 **IV. VIOLATION OF A.R.S. § 44-1841**
4 **(Offer or Sale of Unregistered Securities)**

5 122. From on or about June 2001, TENCZA and OHST, through AEG, offered or sold securities
6 in the form of investment contracts, within or from Arizona.

7 123. During the foregoing violations of A.R.S. § 44-1841, TENCZA controlled AEG by or
8 through stock ownership, agency or otherwise or pursuant to or in connection with an agreement or
9 understanding with one or more persons by or through stock ownership, agency or otherwise.
10 Therefore, TENCZA is jointly and severally liable under A.R.S. §44-1999 to the same extent as
11 AEG for its violations of A.R.S. §44-1841.

12 124. From May 2001, GROH aided and abetted the unlawful offer and sale of securities by AEG
13 in violation of A.R.S. §44-1841 in the form of investment contracts, within or from Arizona.

14 125. The securities referred to above were not registered pursuant to the provisions of Articles 6
15 or 7 of the Securities Act.

16 126. This conduct violates A.R.S. § 44-1841.

17 **V. VIOLATION OF A.R.S. § 44-1842**
18 **(Transactions by Unregistered Dealers or Salesmen)**

19 127. TENCZA and OHST offered or sold securities within or from Arizona, while not registered
20 as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

21 128. This conduct violates A.R.S. § 44-1842.

22 129. During the foregoing violations of A.R.S. § 44-1842, TENCZA controlled AEG by or
23 through stock ownership, agency or otherwise or pursuant to or in connection with an agreement or
24 understanding with one or more persons by or through stock ownership, agency or otherwise.
25 Therefore, TENCZA is jointly and severally liable under A.R.S. §44-1999 to the same extent as
26 AEG for its violations of A.R.S. §44-1842.

VI. VIOLATION OF A.R.S. § 44-1991
(Fraud in Connection with the Offer or Sale of Securities)

130. In connection with the offer or sale of securities within or from Arizona, TENCZA, AEG, OHST and GROH directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. The conduct of TENCZA and OHST, through AEG, and GROH included, but is not limited to, the following:

a) GROH failed to inform his clients in the letter to them that the telephone numbers that the clients were being directed to call did not connect to his office, but were instead phone numbers that connected to AEG offices;

b) GROH failed to inform his clients that he did not consider the "paralegals" from his office to be his employees and also did not inform his clients that the "paralegals" were licensed insurance salesmen who would be attempting to sell the Universal lease;

c) GROH failed to inform his clients that he was not supervising or monitoring the activities of the "paralegals" from his office;

d) GROH failed to inform his clients that he had placed his letterhead on AEG computers and authorized AEG salesmen to use business cards with the name of GROH's law office printed on them. AEG mailed letters printed on GROH's letterhead directly to GROH's clients. AEG salesmen presented business cards that included the name of GROH's law office and the salesmen. GROH's letter to his clients informed them that "paralegals" from his office would be traveling to meet with them at their homes and review their trusts. As a result, GROH's clients were made to believe that AEG salesmen were employed by GROH and working under his control and supervision when, in fact, GROH was not monitoring or supervising their activities and did not consider the salesmen to be his employees;

1 e) GROH authorized AEG salesmen to disclose to GROH's clients that he had invested in
2 the Universal lease, but failed to inform, or require AEG to inform, his clients that his Universal
3 lease investment was \$5000, the minimum amount permitted under the terms of the Universal lease
4 program;

5 f) GROH failed to disclose to his clients that he was receiving a commission from AEG for
6 each sale of the Universal lease to one of GROH's clients;

7 g) GROH failed to determine from his clients whether AEG salesmen were communicating
8 any distinction between the review services provided by the "paralegals" from GROH's law office as
9 opposed to the presentation of the Universal lease by AEG salesmen. As a result, GROH's clients
10 were misled as to what company was behind the Universal lease and the relationship, if any, between
11 the Universal lease, GROH and the AEG salesmen;

12 h) TENCZA, through AEG, misrepresented to at least one prospective investor that the
13 Universal lease was only being offered to investors who wanted to get out of an annuity when AEG
14 actually sold the Universal lease to several investors who either did not own annuities or did not
15 surrender an annuity in order to purchase the Universal lease;

16 i) TENCZA, through AEG, failed to present and discuss all three options under the
17 Universal lease with at least one prospective investor;

18 j) TENCZA, through AEG, informed prospective investors that the properties and/or
19 owners of the properties being leased were fully insured. Claims that the properties and/or owners of
20 the properties being leased were fully insured were misleading in that the Universal lease itself was
21 not insured;

22 k) TENCZA, through AEG and with little or no salient financial and/or background
23 information about the companies operating the Universal lease program, informed at least one
24 prospective investor that Yucatan Resorts and Resort Holdings had "deep pockets."
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1 l) TENCZA, through AEG, informed at least one prospective investor that GROH's law
2 firm would manage the prospective investor's Universal lease;

3 m) TENCZA, through AEG, informed at least one prospective investor that the only risk
4 associated with the Universal lease was "if nobody goes to Cancun."

5 n) OHST, through AEG, presented the Universal lease to investors and recommended to at
6 least one prospective investor that they purchase the Universal lease. OHST made this
7 recommendation despite having little or no understanding of the Universal lease. According to
8 OHST, he did not perform any due diligence of his own, did not know how the return on the lease
9 was generated and did not understand Options 1 and 2 of the Universal lease;

10 o) TENCZA and OHST, through AEG, informed at least one prospective investor that the
11 rate of return on the Universal lease was contractually guaranteed and that the properties were debt
12 free;

13 p) TENCZA and OHST, through AEG, informed prospective investors that the Universal
14 lease was safe and secured which, according to TENCZA and OHST, meant that if anything
15 happened, investors would be protected since they were in the "first lien position." This
16 representation was made notwithstanding that TENCZA and OHST had little or no evidence to
17 establish whether the properties were mortgaged and, if so, to what degree or what steps, if any, had
18 been taken to put investors in the first lien position;

19 q) TENCZA and OHST, through AEG, misrepresented the safety and security of the
20 Universal lease by emphasizing to potential investors that GROH was an attorney who had invested
21 in the Universal lease himself and had "put his stamp of approval" on the Universal lease and would
22 not "risk his law license" unless he felt comfortable with the Universal lease;

23 r) TENCZA and OHST, through AEG, and GROH failed to disclose to potential investors
24 the amount of commission to be received on each sale of the Universal lease;
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1 s) TENCZA and OHST, through AEG, and GROH failed to disclose to prospective
2 investors any financial statements or other salient financial and/or background information about the
3 companies operating the Universal lease program;

4 t) TENCZA and OHST, through AEG, and GROH failed to advise prospective investors of
5 the state regulatory actions taken involving Kelly, Yucatan and its related entities and the potential
6 consequences of those actions with respect to the Universal lease;

7 u) TENCZA and OHST, through AEG, and GROH failed to fully disclose to prospective
8 investors the risks associated with the Universal lease;

9 131. This conduct violates A.R.S. § 44-1991.

10 132. TENCZA directly or indirectly controlled AEG within the meaning of A.R.S. § 44-1999.
11 Therefore, TENCZA is liable to the same extent as AEG for its violations of A.R.S. § 44-1991.

12 133. In connection with the offers or sales of securities within or from the State of Arizona,
13 GROH aided and abetted the unlawful sales of securities by AEG in violation of A.R.S. §44-1991.

14 **VII. REQUESTED RELIEF**

15 The Division requests that the Commission grant the following relief against
16 RESPONDENTS:

17 1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act
18 pursuant to A.R.S. §44-2032;

19 2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from
20 their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S.
21 §44-2032;

22 3. Order RESPONDENTS to pay the State of Arizona administrative penalties of up to five
23 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. §44-2036;

1 4. Order that the marital communities of TENCZA, OHST, and GROH be subject to any
2 order of restitution, rescission, administrative penalties, or other appropriate affirmative action
3 pursuant to A.R.S. §25-215; and

4 5. Order any other relief that the Commission deems appropriate.

5 **VIII. HEARING OPPORTUNITY**

6 RESPONDENTS may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

7 **If any RESPONDENT requests a hearing, the RESPONDENT must also answer this Notice.**

8 A request for hearing must be in writing and received by the Commission within 10 business days
9 after service of this Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail
10 the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
11 Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form
12 and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
13 Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

14 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
15 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
16 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
17 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
18 the Division in this Notice of Opportunity for Hearing.

19 Persons with a disability may request a reasonable accommodation such as a sign language
20 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
21 Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail
22 lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the
23 accommodation.
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IX. ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if any RESPONDENT requests a hearing, RESPONDENT must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, RESPONDENT must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to **William W. Black**, Staff Attorney.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each RESPONDENT or RESPONDENT'S attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When RESPONDENT intends in good faith to deny only a part or a qualification of an allegation, RESPONDENT shall specify that part or qualification of the allegation and shall admit the remainder. RESPONDENT waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 16th day of October, 2006.

Mark Dinell
Assistant Director of Securities