

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKET CONTROL

DOCKETED

JUN 29 2007

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

DOCKETED BY

In the matter of:
LEONARD CLARK RHODES, JR. and
MARGARET RHODES, husband and wife,
Respondents.

DOCKET NO. S-20537A-07-0390
**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER, TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES AND FOR OTHER
AFFIRMATIVE ACTION**

**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 Respondent Leonard Clark Rhodes, Jr. has engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.
JURISDICTION**

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

**II.
RESPONDENT**

2. Leonard Clark Rhodes, Jr. ("Rhodes") is a resident of Gilbert, Arizona.

1 address. When mail was received there, it was again forwarded. Through use of the Canadian
2 accommodation address, none of the investors were aware of the Phoenix or other subsequent
3 addresses. The few investment returns that investors received were made through use of money
4 orders.

5 10. Rhodes suggested that investors let their returns accumulate, rather than taking returns
6 out of Semper Libera. Although the investors received minimal payments back, those payments
7 stopped. When the investors attempted to contact Semper Libera, they were unable to do so. During
8 this time, Rhodes continued to provide assurances to investors that their funds would be available.

9 11. At least two of the Arizona investors were over 80 years old when they made their
10 investments in Semper Libera. Through Rhodes, investors put at least \$127,000 into Semper Libera.

11 **The Universal Lease Investment**

12 12. Yucatan Resorts, Inc. ("Yucatan") along with Yucatan Resorts, S.A. ("Yucatan-
13 S.A."), designed, promoted and operated a "Universal lease" timeshare program involving
14 investments in hotel units in Cancun, Mexico and other Central American locales from
15 approximately March 2000 to December 2002.

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

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

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

24 16. According to Universal lease promotional materials, investors were presented with the
25 opportunity to select one of three separate Universal lease "options."
26

1 17. Under "Option 1" of the Universal lease, investors could choose to forego any returns
2 on their investments, and instead elect to utilize a timeshare unit themselves. Pursuant to this option,
3 an investor would be assigned a specific unit, for a specific week, and at a specific location, and only
4 after a minimum investment of \$5,000 had been paid. The investor had no input as to the date,
5 quality or location of the timeshare assignment. Additionally, an Option 1 purchaser was required to
6 pay annual management fees, ranging from \$380 to \$645 per year with said amounts subject to
7 increases in the Consumer Price Index. The amounts to be charged for annual management fees
8 resulted in an effective surcharge of \$9,000 to \$16,125 (or more) over the life of the 25 year
9 timeshare lease. For a \$5,000 purchaser, this would amount to a total payment of \$14,000 to \$21,125
10 in return for 12 weeks of timeshare access (over a 25 year period) at an unknown unit, at an
11 undisclosed location, during an undisclosed time of year.

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

16 19. Upon information and belief, Rhodes did not sell a single Universal lease under
17 Option 1.

18 20. The Universal lease "Option 2," presented investors the opportunity to rent out
19 assigned timeshare units themselves and contained many of the same costs and conditions associated
20 with Option 1. Option 2 again required the purchaser to forego any guaranteed investment returns,
21 and instead imposed annual maintenance fees on the purchaser for the full 25 year lease term.
22 Prospective Option 2 purchasers were unaware, until after the purchase had been made, of the
23 location, resort type and permitted dates of use for the timeshare. Sales material warned that this self-
24 renting option would not bring in the same level of revenues as would a professional third party
25 servicing agent as offered in Option 3. Promotional materials provided a discussion of the financial
26 disincentives, but no discussion, comments or guidance of the advantages of selecting option 2, other

1 than the brief suggestion that the self-renting option could be carried out through the "placing of an
2 advertisement in the local paper."

3 21. Upon information and belief, Rhodes did not sell a single Universal lease under
4 Option 2.

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

12 23. The Universal lease materials identified World Phantasy Tours Inc. ("World
13 Phantasy") as the designated third party management company responsible for leasing the investor's
14 timeshare unit. World Phantasy was alleged to be a resort management company and travel agency
15 operating as the servicing agent for the Yucatan Universal lease program.

16 24. Selecting World Phantasy, the only management company identified or offered, as the
17 leasing agent was the only method under which investors could earn the promised 11 or 9 percent
18 rate of return on their Universal lease investments.

19 25. Once investors had made their investments in the Universal lease program and had
20 signed the Management Agreement with World Phantasy, the investors were to receive an 11 and
21 later 9 percent per annum return on their investments for the life of the Universal lease. The investors
22 had no duties or responsibilities following their investments, and relied solely on others for
23 development of new units and/or management of existing rental units to generate the rental profits
24 that would purportedly support the investors' investment returns.

25 26. According to the marketing materials for the Universal lease, Option 3 of the
26 Universal lease provided a multitude of advantages to more traditional investments. Among them

1 was the assertion that Option 3 provided a superior rate of return over most other investments and
2 that the Universal lease was supported by “debt-free” resort properties which resulted in the
3 Universal lease program being “safe and secure.”

4 27. Option 3 was also the only Universal lease option that allowed investors to recoup up
5 to 5 percent of any liquidation penalty incurred during the process of rolling other investments into
6 the Universal lease program. This feature was an added incentive for investors to exchange their
7 existing investment portfolios, including individual retirement accounts and annuities, into Option 3
8 of the Universal lease program.

9 28. Upon information and belief, all investors who purchased contracts from Rhodes
10 selected Option 3.

11 29. Rhodes was paid a commission for the sale of the Universal Leases.

12 30. Rhodes sold Universal leases to approximately 2 individuals or entities within or from
13 the State of Arizona from February 1, 2002 through October 31, 2003. Total sales made by Rhodes
14 were approximately \$60,052 and resulted in receipt of commissions by Rhodes of approximately
15 \$6,105.20.

16 31. Prior to and during the period of Rhodes’s sales to investors in Arizona, Yucatan and
17 its related entities had been subject to investigations and orders in multiple states involving its
18 development, marketing and sale of promissory notes and Universal leases. Rhodes failed to disclose
19 this information to the investors with whom he dealt.

20 32. The orders that Rhodes could have revealed to investors include:

21 a) May 18, 1999 administrative order by the New Mexico Securities Division
22 related to Yucatan Investment Corp. for the sale of unregistered, non-exempt securities – in the form
23 of 9 month promissory notes – through unlicensed sales agents. Michael Eugene Kelly (“Kelly”) was
24 the sole incorporator, statutory agent, president and secretary of Yucatan Investments, and Yucatan
25 Investment was based out of the same business address as Yucatan, Yucatan-S.A., RHI, and RHI-
26 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
4 Kelly on behalf of himself and Yucatan Investment Corp. for the sale of unregistered, nonexempt
5 securities in 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
7 Department of Commerce signed by Kelly as president for the sale of unregistered, nonexempt
8 securities;

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

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

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

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

24 33. Yucatan informed its Arizona based sales agents of the existence of the Order.

25 34. Despite the existence of the Order, after its effective date, Rhodes sold at least one
26 Universal lease within or from the State of Arizona. Rhodes had the investor use a Hawaii address

1 for the investment, despite the fact that the investor was a resident of Arizona. Rhodes told the
2 investor that the Universal Lease had not been licensed for sale in Arizona and thus she would need
3 to use the Hawaii address in order to purchase the investment.

4
5 **IV.**

6 **VIOLATION OF A.R.S. § 44-1841**

7 **(Offer or Sale of Unregistered Securities)**

8 35. From on or about 2001, Rhodes offered or sold securities in the form of investment
9 contracts, within or from Arizona.

10 36. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
11 Securities Act.

12 37. This conduct violates A.R.S. § 44-1841.

13 **V.**

14 **VIOLATION OF A.R.S. § 44-1842**

15 **(Transactions by Unregistered Dealers or Salesmen)**

16 38. Rhodes offered or sold securities within or from Arizona while not registered as a
17 dealer or salesman pursuant to Article 9 of the Securities Act.

18 39. This conduct violates A.R.S. § 44-1842.

19 **VI.**

20 **VIOLATION OF A.R.S. § 44-1991**

21 **(Fraud in Connection with the Offer or Sale of Securities)**

22 40. In connection with the offer or sale of securities within or from Arizona, Rhodes
23 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
24 statements of material fact or omitted to state material facts which were necessary in order to make
25 the statements made not misleading in light of the circumstances under which they were made; or
26 (iii) engaged in transactions, practices or courses of business which operated or would operate as a

1 fraud or deceit upon offerees and investors. Rhodes conduct includes, but is not limited to, the
2 following:

3 a) Failing to disclose to investors any necessary information about the Semper
4 Libera investment, including risk, financial status of Semper Libera, the location of any assets of
5 Semper Libera and the method that Semper Libera used to pay any investors;

6 b) Failing to disclose to investors that the address used by Semper Libera in
7 Canada was an accommodation address, leaving the investors with no method to contact Semper
8 Libera;

9 c) Failing to disclose to at least one Arizona Universal lease investor that it was
10 in violation of Arizona law to sell the Universal lease to her after the Commission had ordered all
11 sales to stop;

12 d) Failing to disclose to Universal Lease investors of the commissions he
13 received for selling the investment; and

14 e) Failing to disclose to Universal Lease investors the various orders entered
15 against the companies and Michael E. Kelly.

16 41. This conduct violates A.R.S. § 44-1991.

17 **XII.**

18 **REQUESTED RELIEF**

19 The Division requests that the Commission grant the following relief:

20 1. Order Rhodes to permanently cease and desist from violating the Securities Act, pursuant to
21 A.R.S. § 44-2032;

22 2. Order Rhodes to take affirmative action to correct the conditions resulting from his acts,
23 practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

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

26

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

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

5 **XIII.**

6 **HEARING OPPORTUNITY**

7 Rhodes and M. Rhodes may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C.
8 R14-4-306. **If any respondent requests a hearing, respondent must also answer this Notice.** A
9 request for hearing must be in writing and received by the Commission within 10 business days after
10 service of this Notice of Opportunity for Hearing. Each respondent must deliver or mail the request
11 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
12 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and
13 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
14 Commission's Internet web site at <http://www.azcc.gov/divisions/util/forms/>.

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

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

25 **XIV.**

26 **ANSWER REQUIREMENT**

1 Pursuant to A.A.C. R14-4-305, if Rhodes or M. Rhodes requests a hearing, Rhodes or M.
2 Rhodes must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket
3 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within
4 30 calendar days after the date of service of this Notice. A Docket Control cover sheet must
5 accompany the Answer. A cover sheet form and instructions may be obtained from Docket
6 Control by calling (602) 542-3477 or on the Commission's Internet web site at
7 <http://www.azcc.gov/divisions/util/forms/>.


8 Additionally, Rhodes or M. Rhodes must serve the Answer upon the Division. Pursuant to
9 A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
10 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
11 addressed to Mark Dinell.

12 The Answer shall contain an admission or denial of each allegation in this Notice and the
13 original signature of each Respondent or their attorney. A statement of a lack of sufficient
14 knowledge or information shall be considered a denial of an allegation. An allegation not denied
15 shall be considered admitted.

16 When Rhodes or M. Rhodes intends in good faith to deny only a part or a qualification of
17 an allegation, Rhodes or M. Rhodes shall specify that part or qualification of the allegation and
18 shall admit the remainder. Rhodes or M. Rhodes waive any affirmative defense not raised in the
19 answer.

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

22 Dated this 28 day of June, 2007.

23
24 
25 _____
26 Matthew J. Neuber
Director of Securities