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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

AUG 13 2007

DOCKETED BY	<i>nr</i>
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In the matter of)
JOHN EDWARD TENCZA and)
CHRISTINE M. TENCZA, husband and)
wife)
2741 West Piazza Drive)
Meridian, Idaho 83642)
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.

DOCKET NO. S-20483A-06-0661

DECISION NO. 69777

ORDER TO CEASE AND DESIST, ORDER OF RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY: JOHN EDWARD TENCZA AND CHRISTINE M. TENCZA, AMERICAN ELDER GROUP, L.L.C AND AMERICAN ELDER GROUP, INC.

Respondents JOHN EDWARD TENCZA AND CHRISTINE M. TENCZA, AMERICAN ELDER GROUP, L.L.C. and AMERICAN ELDER GROUP, INC. ("RESPONDENTS") elect to

1 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
2 of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And
3 Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same ("Order").
4 RESPONDENTS admit the jurisdiction of the Arizona Corporation Commission ("Commission");
5 admit the Findings of Fact and Conclusions of Law contained in this Order, except where indicated
6 otherwise; and consent to the entry of this Order by the Commission.

7 **I. FINDINGS OF FACT**

8 1. At all times material hereto, JOHN E. TENCZA ("TENCZA") was the founder, sole
9 member, manager, president and a controlling person of AMERICAN ELDER GROUP, L.L.C.,
10 an Arizona limited liability company formed in 2000 with at least one office in Arizona through
11 which it has transacted business within and from Arizona.

12 2. At all times material hereto, TENCZA was also the founder, manager, president, secretary,
13 treasurer, director and a controlling person of AMERICAN ELDER GROUP, INC, formerly
14 known as American Investment Management Group, Inc., a Nevada corporation with at least one
15 office in Arizona through which it has transacted business within and from Arizona.

16 3. "AEG" hereafter refers to AMERICAN ELDER GROUP, L.L.C. and AMERICAN
17 ELDER GROUP, INC. collectively.

18 4. At all times material hereto, TENCZA was a resident of Arizona and was licensed to sell
19 insurance and real estate in the State of Arizona, but was not registered as a securities salesperson.

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

25 6. GREGORY GRANT GROH ("GROH") at all times material hereto was a resident of
26 Arizona and was not registered as a securities salesperson.

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

3 8. TENCZA and GROH met in or around 1996 while both were working with American
4 Estate Services.

5 9. GROH possessed contact information for approximately 1,400 individuals for whom he
6 had written and/or reviewed trust documents while working with American Estate Services and
7 Liberty Estate Management. GROH was aware that these individuals had been promised free
8 updates for life on their trust related documents and that many of their documents were in need of
9 updating.

10 10. TENCZA and GROH reached an agreement ("agreement") that authorized TENCZA to
11 travel to the homes of GROH's clients¹ to review their trust documents to determine whether any
12 trust work needed to be completed.

13 11. In exchange for a commission on the sale of any product purchased, GROH authorized
14 TENCZA to offer annuities and other insurance products to GROH's clients.

15 12. Pursuant to the agreement with GROH, TENCZA traveled to the homes of GROH's
16 clients and reviewed their trust documents.

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

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

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

25
26 ¹ Hereinafter, "GROH's clients" is intended to refer to the approximately 1,400 individuals only for whom GROH possessed contact information as a result of his work with American Estate Services and Liberty Estate Management.

1 16. The Universal lease was designed, promoted and operated by Yucatan Resorts, Inc.
2 (“Yucatan”), along with Yucatan Resorts, S.A. (“Yucatan-S.A.”) and involved investments in hotel
3 units in Cancun, Mexico and other Central American locales from approximately March 2000 to
4 December 2002.

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

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

12 19. Beginning in 2000 and continuing through at least June 2002, a form letter (“the letter”) was
13 mailed to all of GROH’s clients.

14 20. The letter was printed on GROH’s letterhead and included his signature.

15 21. The letter to GROH’s clients alleged that his office had “received numerous calls, as well as
16 documented reports, concerning issues that may impact the legal effectiveness of your Trust.” The
17 letter went on to state that GROH was the attorney who had reviewed the clients’ Living Trust when
18 the client had first implemented their Estate Plan.

19 22. The letter informed clients that they could call the “client services line” at 480-477-6777 or 1-
20 888-579-1643 to arrange for an appointment with a “paralegal” from GROH’s office who would
21 meet the client in their home to review their trust documents. According to the letter, there would be
22 no charge for the review service.

23 23. The telephone numbers set forth in the body of the letter to GROH’s clients connected to
24 AEG offices that were staffed with AEG representatives who answered the phones.

1 24. GROH's clients were not made aware, prior to their meetings with AEG salesmen, that the
2 "paralegals" from GROH's office were TENCZA and other licensed insurance salesmen who would
3 be offering annuities as well as the Universal lease investment.

4 25. When meeting with GROH's clients, AEG salesmen presented business cards that included
5 the name of GROH's law office and the salesman. The telephone numbers printed on the business
6 cards connected to the offices of AEG.

7 26. The review of client trust documents by AEG salesmen included reviewing the assets of
8 GROH's clients so that a determination could be made whether the trusts had actually been funded,
9 whether the trust documents were complete and whether any changes had occurred requiring
10 substantive changes to the trust documents. Pursuant to the terms of the agreement between GROH
11 and TENCZA, GROH was responsible for drafting modifications to the trust documents, if any, such
12 as powers of attorney or living wills, and providing the new documents to AEG who would deliver
13 and notarize the documents to clients.

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

16 28. Net commissions received by AEG totaled \$1,120,403.

17 29. TENCZA failed to disclose to prospective investors the amount of commission to be received
18 on each sale of the Universal lease.

19 30. TENCZA, during sales presentations, emphasized to prospective investors the safety and
20 security of the Universal lease.

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

1 32. The information and orders that existed in the public domain that TENCZA could have
2 revealed to investors include:

3 a) May 18, 1999 administrative order by the New Mexico Securities Division related to
4 Yucatan Investment Corp. for the sale of unregistered, non-exempt securities – in the form of 9
5 month promissory notes – through unlicensed sales agents. Michael Eugene Kelly (“Kelly”) was the
6 sole incorporator, statutory agent, president and secretary of Yucatan Investments, and Yucatan
7 Investment was based out of the same business address as Yucatan, Yucatan-S.A., RHI, and RHI-
8 S.A. Yucatan Investments’ operation was the immediate predecessor to the current Universal lease
9 program; Kelly was the founder, president and owner of Yucatan and was a director, officer and
10 owner of Yucatan S.A. Kelly is the founder, chairman and owner of RHI.

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

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

16 d) November 7, 2000, Order to Cease and Desist, that became permanent on December 21,
17 2000, by the Connecticut Department of Banking related to Yucatan Investment Corp. for the sale of
18 unregistered, nonexempt securities in the form of promissory notes through unlicensed sales agents;

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

23 f) October 22, 2002, Summary Order to Cease and Desist from the Pennsylvania Securities
24 Commission related to Yucatan-S.A. arising out of multiple registration and fraud violations as
25 prescribed by the Pennsylvania Securities Act (rescinded by subsequent order dated January 20,
26 2004).

1 33. As a result of TENCZA's ownership of and membership in AEG, he was responsible for
2 key activities of AEG including recruitment, retention and training of AEG employees including
3 sales agents, management of sales activities and compensation of AEG employees and salesmen.
4 TENCZA, as the owner of AEG, had a financial stake in all sales of the Universal lease made by
5 AEG salesmen. At all times material hereto, TENCZA performed his duties as owner and
6 member and thereby controlled AEG.

7 34. At all times relevant, TENCZA or any AEG salesmen were not registered as a securities
8 salesman in Arizona.

9 35. At all times relevant, the Universal lease investment was not registered as a security nor was
10 it exempt from registration.

11 II. CONCLUSIONS OF LAW

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

14 2. The Universal lease investment was a security within the meaning of A.R.S. § 44-
15 1801(26).

16 3. RESPONDENTS offered or sold securities within or from Arizona, within the
17 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 4. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
19 were neither registered nor exempt from registration.

20 5. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
21 neither registered as dealers or salesmen nor exempt from registration.

22 6. RESPONDENTS violated A.R.S. § 44-1991 by making untrue statements or
23 misleading omissions of material facts.

24 7. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
25 A.R.S. § 44-2032.

26

1 Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of
2 this Order until paid in full.

3 Payments shall be made payable to the "State of Arizona" to be placed in an interest-
4 bearing account controlled by the Commission. The Commission shall disburse the funds on a pro
5 rata basis to investors shown on the records of the Commission to have purchased a Universal
6 lease from an AEG salesman. Any restitution funds that the Commission cannot disburse because
7 an investor refuses to accept such payment shall be disbursed on a pro-rata basis to the remaining
8 investors shown on the records of the Commission. Any funds that the Commission determines it
9 is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of
10 Arizona. In the event that, while any amount of restitution ordered herein remains unpaid, the
11 restitution ordered in the Matter of Yucatan Resorts, Inc. et. al. (S-03539A-03-0000) is fully paid
12 as set forth in the Final Judgment and Order of Permanent Injunction filed in Maricopa County
13 Superior Court (CV2006-001547), then the remaining balance of restitution only hereunder shall
14 likewise be deemed paid, satisfied, released or discharged.

15 IT IS FURTHER ORDERED that the failure of a RESPONDENT to comply with any of
16 the terms and conditions contained in this Order, may be deemed in default and at the discretion of
17 the Commission, and notwithstanding any agreement for installment payment that may hereafter
18 be entered, the remaining balance of any penalty or restitution shall become immediately due and
19 payable.

20 IT IS FURTHER ORDERED that if any RESPONDENT fails to comply with this Order,
21 any outstanding balance may be deemed in default and shall be immediately due and payable.

22 IT IS FURTHER ORDERED, that if any RESPONDENT fails to comply with this Order
23 the Commission may bring further legal proceedings against that RESPONDENT including
24 application to the Superior Court for an order of contempt.

25 IT IS FURTHER ORDERED, that since no findings have been made concerning the
26 conduct of CHRISTINE M. TENCZA, and since she is named in these proceedings solely to

1 comply with the requirements of A.R.S. §25-215(D), any obligation of CHRISTINE M. TENCZA
2 hereunder is limited to her interest in the community property that she shares with JOHN
3 EDWARD TENCZA.

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1 IT IS FURTHER ORDERED that this Order shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3
4 *Lawrence S. ...*

5 CHAIRMAN

William A. Miller

COMMISSIONER

6
7 *Jeffrey M. Hatch-Nielsen*

COMMISSIONER

R. M. ...

COMMISSIONER

COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
10 Executive Director of the Arizona Corporation
11 Commission, have hereunto set my hand and caused the
12 official seal of the Commission to be affixed at the
13 Capitol, in the City of Phoenix, this 13th day of
August, 2007.

14 *Brian C. McNeil for BCM*

15 BRIAN C. McNEIL
16 Executive Director

17 _____
DISSENT

18
19 _____
DISSENT

20
21 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
22 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov.

23 (wwb)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents JOHN EDWARD TENCZA AND CHRISTINE M. TENCZA,
3 AMERICAN ELDER GROUP, L.L.C. and AMERICAN ELDER GROUP, INC.
4 (“RESPONDENTS”) admit the jurisdiction of the Commission over the subject matter of this
5 proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to a
6 hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily
7 waive any and all rights to a hearing before the Commission and all other rights otherwise
8 available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.
9 RESPONDENTS acknowledge that the Order to Cease and Desist, Order of Restitution, Order for
10 Administrative Penalties and Consent to Same (“the Order”) constitutes a valid final order of the
11 Commission.

12 2. RESPONDENTS knowingly and voluntarily waive any right under Article 12 of the
13 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
14 resulting from the entry of the Order.

15 3. RESPONDENTS acknowledge and agree that the Order is entered into freely and
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. RESPONDENTS acknowledge that they have been represented by an attorney in
18 this matter, that they have reviewed the Order with their attorney, Brian W. Hendrickson, and
19 understands all terms it contains.

20 5. RESPONDENTS admit, except with regard to the Conclusion of Law that they
21 violated A.R.S. §44-1991, the Findings of Fact and Conclusions of Law contained in the Order.
22 With regard to the Conclusion of Law that RESPONDENTS violated A.R.S. §44-1991,
23 RESPONDENTS admit violation of A.R.S. §44-1991 only for the purposes of any present or
24 future administrative proceeding before the Commission, the State of Arizona or any of its
25 governmental agencies.

26

1 6. Subject to the provisions of paragraph 5 under this Consent to Entry of Order, by
2 consenting to the entry of the Order, RESPONDENTS agree not to contest the validity of the
3 Findings of Fact and Conclusions of Law contained in the Order in any present or future
4 administrative proceeding before the Commission, the State of Arizona or any of its governmental
5 agencies and agree not to take any action or to make, or permit to be made, any public statement
6 denying, directly or indirectly, any Finding of Fact or Conclusion of Law in the Order or creating
7 the impression that the Order is without factual basis. Notwithstanding the foregoing, the Order is
8 not intended to collaterally estop or preclude the RESPONDENTS from defending themselves in
9 any administrative proceeding to which the Commission, the State of Arizona or any of its
10 governmental agencies are not a party, including, to the extent allowed by law, being permitted to
11 fully explain the facts and potential mitigating circumstances surrounding RESPONDENTS
12 involvement in the sale of the Universal lease. RESPONDENTS will undertake steps necessary to
13 assure that all of their agents and employees understand and comply with this agreement.

14 7. While the Order settles this administrative matter between RESPONDENTS and
15 the Commission, RESPONDENTS understand that the Order does not preclude the Commission
16 from instituting other administrative or civil proceedings based on violations that are not addressed
17 by the Order.

18 8. RESPONDENTS understand that the Order does not preclude the Commission
19 from referring this matter to any governmental agency for administrative, civil, or criminal
20 proceedings that may be related to the matters addressed by the Order.

21 9. RESPONDENTS understand that the Order does not preclude any other agency or
22 officer of the State of Arizona or its subdivisions from instituting administrative, civil, or criminal
23 proceedings that may be related to matters addressed by the Order.

24 10. RESPONDENTS agree that they will not apply to the State of Arizona for
25 registration as a securities dealer or salesman or for licensure as an investment adviser or
26 investment adviser representative at any time in the future.

1 11. RESPONDENTS agree that they will not exercise any control over any entity that
2 offers or sells securities or provides investment advisory services within or from Arizona at any
3 time in the future.

4 12. RESPONDENTS acknowledge that any restitution or penalties imposed by the
5 Order are obligations of the JOHN EDWARD TENCZA and marital community of CHRISTINE
6 M. TENCZA and JOHN EDWARD TENCZA.

7 13. RESPONDENTS consent to the entry of the Order and agree to be fully bound by
8 its terms and conditions.

9 14. RESPONDENTS acknowledge and understand that if they fail to comply with the
10 provisions of the order and this consent, the Commission may bring further legal proceedings
11 against them, including application to the superior court for an order of contempt.
12 RESPONDENTS agree that until the restitution and administrative penalty amounts in the Order
13 are paid in full, they shall notify the Director of the Securities Division within 30 days of any
14 change in home address or any change in any of their ability to pay amounts due under the Order.

15 15. RESPONDENTS understand that default shall render them liable to the
16 Commission for its costs of collection and interest at the maximum legal rate.

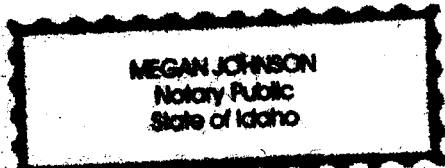
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1 16. RESPONDENT JOHN EDWARD TENCZA represents that he is the sole member,
2 manager, president and a controlling person in AMERICAN ELDER GROUP, L.L.C. and
3 AMERICAN ELDER GROUP, INC. and is thereby authorized to enter into the Order for and on
4 behalf of the AEG entities.

5 John Edward Tencza
6 John Edward Tencza, a married man
7 Christine M. Tencza
8 Christine M. Tencza, a married woman

9 STATE OF ARIZONA)
10 County of Maricopa) ss)

11 Personally appeared before me this 31 day of July, 2007 an individual known to me to be John
12 Edward Tencza and acknowledged the execution of the foregoing instrument.

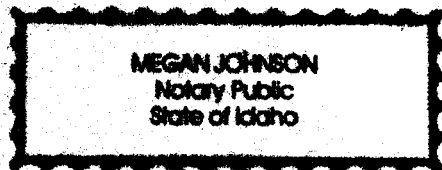


13 Seal: My Commission Expires 5/23/11

14 Megan Johnson
15 NOTARY PUBLIC

16 STATE OF ARIZONA)
17 County of Maricopa) ss)

18 Personally appeared before me this 31 day of July, 2007 an individual known to me to be
19 Christine M. Tencza and acknowledged the execution of the foregoing instrument.



20 Seal: My Commission Expires 5/23/11

21 Megan Johnson
22 NOTARY PUBLIC

