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ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

MEMORANDUM

TO: Mike Gleason, Chairman
William A. Mundell
Jeff Hatch-Miller
Kristin K. Mayes
Gary Pierce

Arizona Corporation Commission
DOCKETED

NOV 21 2007

FROM: Matthew J. Neubert *mjn*
Director of Securities

DOCKETED BY	<i>nr</i>
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DATE: November 15, 2007

RE: Leonard Clark Rhodes, Jr. and Margaret Rhodes, Docket No. S-20537A-07-0390

CC: Dean S. Miller, Interim Executive Director

Attached is a proposed Default Order to Cease and Desist, Order for Restitution and Order for Administrative Penalties against Respondents Leonard Clark Rhodes, Jr. ("Rhodes") and Margaret Rhodes, husband and wife (collectively "Respondents"). The Securities Division ("Division") filed this action on June 26, 2007 and served Respondents on June 30, 2007. Respondents did file communications with the Commission but did not request a hearing in this matter. At the August 16, 2007 procedural conference, the Administrative Law Judge also determined that Respondents had not requested a hearing and directed the Division to file a default order against Respondents.

Rhodes, an Arizona licensed insurance producer, sold two different unregistered investment programs. One, Semper Libera, allegedly was an offshore investment programs, offering 3% per month. Rhodes did not provide the investors with any information regarding Semper Libera's financial condition, the risk of the investment or even inform investors as to Semper Libera's location. Two investors, both over 80, placed \$127,000 in the investment in 2004. Other than minor returns, they have not received any returns from the program.

Rhodes also sold Yucatan Resorts investments to two investors, both over 60 years old. They invested over \$60,000 in the investment. The Arizona Corporation Commission ("Commission") has already entered a final order involving that investment. See Docket No. S-03539A-03-0000. One of the investments made through Rhodes, to an Arizona resident, took place after the date that the Commission issued a temporary cease and desist order against

Yucatan, barring further sales in the investment. As Yucatan was not taking any investments from Arizona after that date, Rhodes instructed the Arizona resident to utilize her son's Hawaii address in order to make the investment, thus attempting to avoid the Commission's temporary cease and desist order.

In addition to defaulting in this action, Rhodes has failed to respond to a Commission subpoena. As a result, the Commission has filed a subpoena enforcement action against him. *See Arizona Corporation Commission v. Leonard Clark Rhodes, Jr.*, Maricopa County Superior Court No. CV2007-013805. That action is currently pending before Judge Buttrick.

The proposed default order finds that Rhodes violated A.R.S. §§ 44-1841, 44-1842 and 44-1991. It requires Respondents to pay restitution of \$160,663.32 and an administrative penalty of \$50,000. The Division recommends approval of the proposed order.

Originator: Mark Dinell

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

In the matter of:)	DOCKET NO. S-20537A-07-0390
LEONARD CLARK RHODES, JR. and))
MARGARET RHODES, husband and wife,)	DECISION NO. _____
Respondents.))
)	ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION AND FOR ADMINISTRATIVE PENALTIES

On June 29, 2007, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative Action (the "Notice") with respect to Leonard Clark Rhodes, Jr. ("Rhodes") and Margaret Rhodes ("M Rhodes"), husband and wife (collectively "Respondents"). The Division served the Notice upon Respondents on June 30, 2007.

The Notice specified that the Respondents had 10 days to request a hearing and 30 days to file an answer. Respondents did file communications with the Commission but did not request a hearing in this matter. On August 6, 2007, the Administrative Law Judge issued a procedural order which stated that Respondents' filings were not a request for hearing. In the order the Judge set a procedural conference allowing Respondents to appear and state whether they wanted a hearing. Respondents did not appear at the August 16, 2007 procedural conference. At the conference, the Judge determined that Respondents had not requested a hearing and directed the Division to proceed

1 Division to proceed with a default order against Respondents.

2 **I.**

3 **FINDINGS OF FACT**

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

5 2. Margaret Rhodes ("M. Rhodes") was at all relevant times the spouse of Rhodes. M.
6 Rhodes is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the
7 liability of the marital community.

8 3. At all times relevant, Rhodes was acting for his own benefit, and for the benefit or in
9 furtherance of the marital community.

10 4. Rhodes is an Arizona licensed insurance producer. He sold annuities and other
11 insurance related products to Arizona residents, many of whom were over 65. Later, after selling
12 the annuities to the investors, he would offer other, unregistered investments to some of those
13 investors.

14 **The Semper Libera Investment**

15 5. Beginning in 2001, Rhodes sold securities in the form of investment contracts in
16 Semper Libera to Arizona residents. Semper Libera offered one "unit" for each \$10 investment.

17 6. Rhodes informed investors that Semper Libera was in the business of developing
18 offshore resorts and casinos. He said that Semper Libera would use the money provided to investors,
19 paying a return of 3% per month to investors. Investors did not participate in the operations of
20 Semper Libera.

21 7. Rhodes did not provide the investors with any information regarding Semper Libera's
22 financial condition, the risk of the investment, where the money would be held or any specific
23 location of the "offshore resorts and casinos." Rhodes did not even inform investors as to Semper
24 Libera's location.

25 8. Investors received correspondence from Semper Libera confirming the investment.
26 They also received periodic correspondence or newsletters relaying information about the investment.

1 Those documents listed an address in Halifax, Nova Scotia, Canada as Semper Libera's address.
2 However, that address was an accommodation address, which forwarded all mail that Semper Libera
3 received to another address in Phoenix, Arizona. The Arizona address was also an accommodation
4 address. When mail was received there, it was again forwarded. Through use of the Canadian
5 accommodation address, none of the investors were aware of the Phoenix or other subsequent
6 addresses. The few investment returns that investors received were made through use of money
7 orders.

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

12 10. Rhodes sold four investments in Semper Libera to two Arizona investors, both of
13 whom were over 80 years old when they made their investments in Semper Libera. Rhodes sold
14 \$127,000 in Semper Libera investments to investors.

15 **The Universal Lease Investment**

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

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

23 13. Rhodes, directly or indirectly, entered into agreements with Yucatan Resorts, *et al.*
24 and/or Resort Holding International, *et al.*, which authorized Rhodes to market and sell investment
25 contracts in the form of leases in the Universal lease program within or from the State of Arizona.
26

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

3 15. According to Universal lease promotional materials, investors were presented with the
4 opportunity to select one of three separate Universal lease "options."

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

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

20 18. Upon information and belief, Rhodes did not sell a single Universal lease under
21 Option 1.

22 19. The Universal lease "Option 2," presented investors the opportunity to rent out
23 assigned timeshare units themselves and contained many of the same costs and conditions associated
24 with Option 1. Option 2 again required the purchaser to forego any guaranteed investment returns,
25 and instead imposed annual maintenance fees on the purchaser for the full 25 year lease term.
26 Prospective Option 2 purchasers were unaware, until after the purchase had been made, of the

1 location, resort type and permitted dates of use for the timeshare. Sales material warned that this self-
2 renting option would not bring in the same level of revenues as would a professional third party
3 servicing agent as offered in Option 3. Promotional materials provided a discussion of the financial
4 disincentives, but no discussion, comments or guidance of the advantages of selecting option 2, other
5 than the brief suggestion that the self-renting option could be carried out through the "placing of an
6 advertisement in the local paper."

7 20. Rhodes did not sell a single Universal lease under Option 2.

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

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

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

22 24. Once investors had made their investments in the Universal lease program and had
23 signed the Management Agreement with World Phantasy, the investors were to receive an 11 and
24 later 9 percent per annum return on their investments for the life of the Universal lease. The investors
25 had no duties or responsibilities following their investments, and relied solely on others for
26

1 development of new units and/or management of existing rental units to generate the rental profits
2 that would purportedly support the investors' investment returns.

3 25. According to the marketing materials for the Universal lease, Option 3 of the
4 Universal lease provided a multitude of advantages to more traditional investments. Among them
5 was the assertion that Option 3 provided a superior rate of return over most other investments and
6 that the Universal lease was supported by "debt-free" resort properties which resulted in the
7 Universal lease program being "safe and secure."

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

13 27. All investors who purchased contracts from Rhodes selected Option 3.

14 28. Rhodes was paid a commission for the sale of the Universal Leases.

15 29. Rhodes sold Universal leases to 2 individuals or entities within or from the State of
16 Arizona from February 1, 2002 through October 31, 2003. Total sales made by Rhodes were
17 approximately \$60,052 and resulted in receipt of commissions by Rhodes of approximately
18 \$6,105.20.

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

23 31. The orders that Rhodes could have revealed to investors include:

24 a) May 18, 1999 administrative order by the New Mexico Securities Division
25 related to Yucatan Investment Corp. for the sale of unregistered, non-exempt securities – in the form
26 of 9 month promissory notes – through unlicensed sales agents. Michael Eugene Kelly ("Kelly") was

1 the sole incorporator, statutory agent, president and secretary of Yucatan Investments, and Yucatan
2 Investment was based out of the same business address as Yucatan, Yucatan-S.A., RHI, and RHI-
3 S.A. Yucatan Investments' operation was the immediate predecessor to the current Universal lease
4 program; Kelly was the founder, president and owner of Yucatan and was a director, officer and
5 owner of Yucatan S.A. Kelly is the founder, chairman and owner of RHI.

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

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

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

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

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

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

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Rhodes, and any of his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents shall pay restitution to the Commission in the amount of \$160,663.32. Payment shall be due in full on the date of this Order. Any amount outstanding shall accrue interest from the date of this Order at the rate of 10% per annum until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents shall pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of Arizona." Payment shall be due in full on the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

For purposes of this Order, a bankruptcy filing by Respondents shall be an act of default. If Respondent does not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

1 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the
2 Commission may bring further legal proceedings against them, including application to the
3 superior court for an order of contempt.

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

5 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

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8 CHAIRMAN

COMMISSIONER

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11 COMMISSIONER

COMMISSIONER

COMMISSIONER

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13 IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim
14 Executive Director of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this _____ day of
18 December, 2007.

19
20 _____
21 DEAN S. MILLER
22 Interim Executive Director

23
24 _____
25 DISSENT

26
27 _____
28 DISSENT

29 This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator,
30 voice phone number 602-542-3931, e-mail lhogan@azcc.gov.
31 (md)