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BEFORE THE ARIZONA CORPORATION COMMISSION

2003 MAY 20 A 11:21

NEW

COMMISSIONERS

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AZ CORP COMMISSION  
DOCUMENT CONTROL

Arizona Corporation Commission

DOCKETED

MAY 20 2003

DOCKETED BY	<i>CM</i>
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**In the matter of:**

YUCATAN RESORTS, INC., d/b/a  
 YUCATAN RESORTS, S.A.,  
 3222 Mishawaka Avenue,  
 South Bend, IN 46615;  
 P.O. Box 2661  
 South Bend, IN 46680;  
 Av. Coba #82 Lote 10, 3er. Piso  
 Cancun, Q. Roo  
 Mexico C.P. 77500

DOCKET NO. S-03539A-03-0000

TEMPORARY ORDER TO CEASE  
AND DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING

RESORT HOLDINGS  
 INTERNATIONAL, INC., d/b/a  
 RESORT HOLDINGS  
 INTERNATIONAL, S.A.,  
 3222 Mishawaka Avenue  
 South Bend, IN 46615;  
 P.O. Box 2661  
 South Bend, IN 46680;  
 Av. Coba #82 Lote 10, 3er. Piso  
 Cancun, Q. Roo  
 Mexico C.P. 77500

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

MICHAEL E. KELLY and LORI KELLY,  
 husband and wife,  
 3222 Mishawaka Avenue.  
 South Bend, IN 46615;  
 P.O. Box 2661  
 South Bend, IN 46680

Respondents.

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1 12. YUCATAN's affiliate, RHI, is responsible for marketing the YUCATAN Universal  
2 Lease Program by generating and distributing various promotional materials and brochures to  
3 YUCATAN sales agents throughout the United States.

4 13. Under this Universal Lease 'opportunity,' investors are required to invest a minimum of  
5 \$5,000 dollars to participate in the program, but they may invest any amount in excess of this  
6 minimum. The investment funds are then wired to YUCATAN'S corporate office, which  
7 subsequently uses the funds for undisclosed purposes.

8 14. Although several different company brochures and promotional materials are distributed  
9 to prospective investors, YUCATAN investors are never apprised as to the financial condition of  
10 YUCATAN or RHI, are never informed as to the uses of YUCATAN investment funds, and are  
11 never afforded financial statements reflecting the degree of solvency of either YUCATAN or RHI.

12 15. According to training materials provide to YUCATAN sales agents, agents are instructed  
13 to tell prospective investors that the investment funds are "basically being used" to purchase more  
14 resort properties, indicating at least some investor funds are being pooled to provide financing for  
15 new acquisitions.

16 16. Prospective YUCATAN investors are given the option to roll part or all of their IRA or  
17 401K portfolios into the Universal Lease Program, effectively replacing their existing investment  
18 holdings with the YUCATAN investment. YUCATAN's Universal Lease application form even  
19 provides a separate section for investors to roll their investment portfolios into YUCATAN.

20 17. A YUCATAN recruiter informed prospective salesmen that approximately 40 percent of  
21 all funds coming through the Universal Lease Program will originate out of investor IRAs or other  
22 similar retirement accounts.

23 18. Under YUCATAN's Universal Lease Program, and as represented in RHI's associated  
24 promotional materials, investors are purportedly afforded the opportunity to select one of three  
25 separate Universal Lease "options." In actuality, options 1 and 2 are illusory choices, effectively  
26 leaving option 3 as sole Universal Lease Program alternative.

1 19. Evidencing this point, recruiters for prospective YUCATAN sales agents coach their  
2 trainees that the Universal Lease's "third option," *i.e.* the investment selection, is the only selection  
3 that need be promoted, offered and sold.

4 20. Under YUCATAN's alleged "Option 1," investors can purportedly choose to forego any  
5 returns on their investments, and instead chose to utilize a timeshare unit themselves. Under this  
6 option, RHI assigns to the investor, at RHI's own choosing, a specific unit, for a specific week,<sup>1</sup> and  
7 at a specific location, and only after the \$5,000 sum (or more) is received by RHI. The investor has  
8 no input into the date, quality or location of this timeshare assignment.

9 21. Moreover, the Option 1 purchaser must pay annual management fees to RHI for this  
10 particular election, ranging from \$380 to \$645 per year (with such amounts subject to Consumer  
11 Price Index increases). This translates into an RHI surcharge of \$9,000 to \$16,125 (or more) over the  
12 life of the 25 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total  
13 payment of at least \$14,000 in return for 12 weeks of timeshare access (over a 25 year period) at an  
14 undisclosed location during an undisclosed time of year.

15 22. Consistent with these uninviting terms, this vacationing selection is largely ignored in  
16 YUCATAN promotional materials, and the selection receives no coverage in the YUCATAN  
17 recruitment seminar for prospective salesmen. Equally relevant, this option would simply have no  
18 applicability to the many investors rolling retirement funds into the YUCATAN program.

19 23. YUCATAN's Universal Lease "Option 2," which ostensibly allows YUCATAN customers  
20 to rent out assigned timeshare units themselves, contains many of the same prohibitive costs and  
21 conditions as that of Option 1. This Option again requires the purchaser to forego any guaranteed  
22 investment returns, and instead imposes substantial annual maintenance fees on the purchaser for the  
23 full 25 year lease term. Prospective Option 2 purchasers must also await a determination by RHI,  
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25 <sup>1</sup> According to the promotional materials, a \$5,000 YUCATAN investor electing the purported "option 1"  
26 receives access to the assigned timeshare unit only *every other* year, or only 12 to 13 weeks during the 25  
year lease period.

1 after the purchase has been made, as to the location, resort type and permitted dates of use for the  
2 timeshare. The undesirability of this selection is further conveyed by RHI's brochure warning that  
3 this self-renting option will not bring in the same level of revenues as would a professional third  
4 party servicing agent.

5 24. Beyond the apparent financial disincentives, the YUCATAN promotional materials provide  
6 no discussion, comments or guidance over the advantages of selecting option 2, other than the brief  
7 suggestion that this self-renting option could be carried out through the "simple placing of an  
8 advertisement in the local paper." This claim ignores the obvious logistical concerns presented by  
9 placing newspaper advertisements in a foreign country and in a city whose official language is not  
10 English. Nor does it take into concern the impracticality of overseeing the rental of a weekly  
11 timeshare unit hundreds or even thousands miles away.

12 25. As with Option 1, Option 2 of the Universal Lease Program is also conspicuously  
13 overlooked in connection with YUCATAN's efforts to recruit and train additional YUCATAN sales  
14 agents. Far from providing an overview of Option 2, a YUCATAN recruiter plainly indicated to  
15 prospective sales agents that the only Universal Lease option of interest for sales agents was the  
16 investment option, Option 3.

17 26. Unlike the illusory selections of Options 1 and 2, Option 3 is repeatedly touted, highlighted  
18 and glorified in YUCATAN's Universal Lease literature. According to YUCATAN and RHI's  
19 promotional brochures, investors who "select" Option 3 would be eligible to receive a 9 per cent per  
20 annum return on their timeshare investments every year for a period of 25 years, after which time the  
21 lease would be renewable for another 20 years.

22 27. For an investor to reap the 9 percent per annum return under this Universal Lease option,  
23 the investor was required, as part of his investment, to hire a "third party" management company to  
24 lease the investor's timeshare unit. The YUCATAN materials identify WORLD PHANTASY as the  
25 designated management company for this servicing function. Although the Universal Lease  
26 application does not mandate the selection of WORLD PHANTASY as the investors' servicing

1 agent, such a selection is the only listed means under which investors can earn the promised 9 per  
2 cent rate of return on their Universal Lease investments.

3 28. To select WORLD PHANTASY as the servicing agent, investors are instructed to  
4 complete a formal "Management Agreement" with the company. This WORLD PHANTASY  
5 Management Agreement is bundled with the Universal Lease promotional and application materials,  
6 and is the single management company identified for servicing YUCATAN's various resorts.

7 29. Neither YUCATAN nor RHI disclose any financial relationship with WORLD  
8 PHANTASY or indicate whether either company is entitled to receive a percentage of this servicing  
9 agent's management fees.

10 30. The "Universal Lease Management Agreement" states: "The Servicer shall have full  
11 power and authority to do those things in connection with such servicing, administration, and  
12 collection activities which it may deem necessary in order to maximize the rental.... Client shall  
13 furnish the Servicer with powers of attorney and other documents necessary or appropriate as  
14 required by the Servicer to enable the Servicer to enable the Servicer to carry out its servicing and  
15 administrative duties hereunder."

16 31. Once investors have made their investments in YUCATAN's Universal Lease Program,  
17 and have signed the Management Agreement with WORLD PHANTASY, the investors are  
18 allegedly eligible to receive a 9 percent per annum return on their investments for the life of the  
19 Universal Lease Program, presently set at 25 years. The investors have no functions or  
20 responsibilities following their investments, and YUCATAN, RHI and WORLD PHANTASY  
21 purportedly develop new and/or manage existing rental units to generate the profits that support the  
22 investors' investment returns.

23 32. According to the YUCATAN and RHI marketing literature, Option 3 of the Universal  
24 Lease provides a multitude of advantages to more traditional investments. The most prominent of  
25 these, as demonstrated during a promotional power point presentation delivered by KELLY, is that  
26 the Universal Lease Program provides a far superior rate of return than most other investments. A

1 second claim is that the Universal Lease is supported by "debt-free" resort properties, and that as a  
2 result the YUCATAN investments are fully safe and secured.

3 33. According to YUCATAN promotional literature, Option 3 is also the only Universal Lease  
4 option that also allows investors to recoup up to 5 percent of any loss or liquidation penalty incurred  
5 during the process of rolling other investments into the YUCATAN Universal Lease Program. This  
6 feature is an added incentive for investors to exchange their existing investment portfolios into  
7 Option 3 of the Universal Lease Program.

8 34. Several Arizona YUCATAN sales agents have since become prolific sellers of the  
9 Universal Lease Program's investment option. One such agent recently boasted that he had sold over  
10 300 investments in YUCATAN over the past three plus years.

11 35. Of this sales agent's investors, all known investors had chosen the 'investment selection,'  
12 Option 3, and all known investors had chosen WORLD PHANTASY as their third party servicing  
13 agent. Moreover, many of these investors were elderly individuals that made their YUCATAN  
14 investments by rolling part or all of their retirement portfolios into the program. To date, this sales  
15 agent has raised several million dollars in YUCATAN investments.

16 36. Another YUCATAN sales agent recently encouraged a 75-year-old Phoenix resident to roll  
17 over his entire investment portfolio, approximately \$61,000, into Option 3 of the Universal Lease  
18 Program. The elderly gentleman followed the recommendation, moving his entire annuities  
19 portfolio into the YUCATAN Universal Lease Program.

20 37. Still another Arizona YUCATAN sales agent, a former paralegal, admitted that she had  
21 sold several additional YUCATAN Universal Lease investments to investors in the greater Phoenix  
22 area.

23 38. A fourth YUCATAN sales agent succeeded in selling to One Vision Children's  
24 Foundation, Inc. (One Vision), a non-profit organization incorporated in Arizona, a \$1.03 million  
25 investment in the Yucatan Universal Lease Program. Prior to this investment, the YUCATAN sales  
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1 agent had recommended that One Vision choose the third investment option and discouraged any  
2 consideration over the other two options.

3 39. Marketing materials provided to investors by the above-referenced YUCATAN sales  
4 agents indicated that "the [YUCATAN] properties were fully insured against loss. All properties are  
5 in compliance [with] the governing laws. Being in compliance with the regulations to sell leases, all  
6 properties are 100% free of debt. As a result, the Leaseholders have a first lien on the YUCATAN  
7 resort properties."

8 40. Arizona-based YUCATAN sales agents repeatedly echoed this claim that these Universal  
9 Lease investments were safe and secure, and that these investments were protected by debt-free  
10 properties. No risk disclosures were made to investors, either during the agents' sales presentations  
11 or through the dissemination of YUCATAN marketing literature.

12 41. YUCATAN sales agents receive commissions constituting at least 10% of the investors'  
13 funds placed into the Universal Lease Program under Option 3. These commission amounts may  
14 increase in cases where affiliated sales agents qualify for sale overrides. The existence of these  
15 commissions has been routinely withheld from YUCATAN investors.

16 42. Yucatan Investment Corp. ("Yucatan Investment") was the subject of an administrative  
17 order of the New Mexico Securities Division on May 18, 1999, for the sale of unregistered, non-  
18 exempt securities by unlicensed agents of nine-month notes. Upon information and belief, Yucatan  
19 Investment is a business entity related to Yucatan.

20 43. Yucatan Investment was also the subject of an administrative order of the South Carolina  
21 Securities Division on July 26, 1999, for the sale of unregistered, non-exempt securities by  
22 unlicensed agents of nine-month notes, and in violation of the anti-fraud provision of South Carolina  
23 securities law.

24 44. Yucatan Investment was also the subject of an administrative order of the Connecticut  
25 Department of Banking, on November 7, 2000, for the sale of unregistered, non-exempt securities by  
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1 unlicensed agents of nine-month notes, and in violation of the anti-fraud provision of Connecticut  
2 securities law.

3 45. YUCATAN was the subject of an administrative order of the Wisconsin Securities  
4 Division on March 3, 2001, for the sale of unregistered securities by unlicensed agent and by  
5 unlicensed broker-dealers and of the anti-fraud provision of Wisconsin securities law.

6 46. YUCATAN was also the subject of an administrative order by Oklahoma Department of  
7 Securities in August, 2001, arising out of possible violations of the Oklahoma Securities Act.

8 47. YUCATAN was also the subject of an administrative cease and desist order from the  
9 Pennsylvania Securities Commission in October, 2002, based on multiple registration and fraud  
10 violations as proscribed under the Pennsylvania Securities Act.

11 48. Arizona investors were never informed, either by YUCATAN sales agents or through  
12 YUCATAN promotional literature, that YUCATAN or any YUCATAN-related entities had  
13 previously been the subject of various orders based on multiple violations of state securities laws.

14 **IV.**

15 **VIOLATION OF A.R.S. § 44-1841**

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

17 49. From on or about December 2001, RESPONDENTS offered or sold securities in the form  
18 of investment contracts, within or from Arizona.

19 50. The securities referred to above were not registered pursuant to the provisions of Articles 6  
20 or 7 of the Securities Act.

21 51. This conduct violates A.R.S. § 44-1841.

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V.

**VIOLATION OF A.R.S. § 44-1842**

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

52. RESPONDENTS offered or sold securities within or from Arizona, while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

53. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

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

54. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS 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. RESPONDENTS' conduct includes, but is not limited to, the following:

a) RESPONDENTS misrepresented the safety of their investments by claiming that Universal Lease investors were fully secured, when in fact the value of RESPONDENTS' real estate holdings was never shown to support the vast amount of funds invested into the program;

b) RESPONDENTS failed to disclose to investors any salient financial and/or background information about the issuer, its affiliates, or its principals;

c) RESPONDENTS failed to disclose to investors that a sales commission of at least 10 percent was routinely paid to YUCATAN sales agents consummating YUCATAN investments;

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1 Persons with a disability may request a reasonable accommodation such as a sign language  
2 interpreter, as well as request this document in an alternative format, by contacting Shelly M.  
3 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
4 [shood@cc.state.az.us](mailto:shood@cc.state.az.us). Requests should be made as early as possible to allow time to arrange the  
5 accommodation.

6 **X.**

7 **ANSWER REQUIREMENT**

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

16 Additionally, any Respondent or the Respondent Spouse must serve the Answer upon the  
17 Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by  
18 hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor,  
19 Phoenix, Arizona, 85007, addressed to Jamie Palfai.

20 The Answer shall contain an admission or denial of each allegation in this Notice and the  
21 original signature of each Respondent/Respondent Spouse or their respective attorneys. A  
22 statement of a lack of sufficient knowledge or information shall be considered a denial of an  
23 allegation. An allegation not denied shall be considered admitted.

24 When any of the Respondents or the Respondent Spouse intends in good faith to deny only  
25 a part or a qualification of an allegation, such Respondent or Respondent Spouse shall specify that  
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1 part or qualification of the allegation and shall admit the remainder. Respondents and/or the  
2 Respondent Spouse waive any affirmative defense not raised in the answer.

3 The administrative law judge presiding over the hearing may grant relief from the  
4 requirement to file an Answer for good cause shown.

5 Dated this 20<sup>th</sup> day of May, 2003.

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8 Mark Sendrow  
9 Director of Securities  
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## Memorandum

2003 MAY 20 A 11: 21

**DATE:** May 19, 2003  
**TO:** Nancy Cole  
Docket Control  
**FROM:** Jamie Palfai, Esq.  
Securities Division  
**RE:** Yucatan Resorts, Inc., *et al.*  
Docket No. S-03539A-03-0000  
Assigned Staff  
**CC:** LaShunda Duty

AZ CORP COMMISSION  
DOCUMENT CONTROL

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This is to notify you that the following individuals have been assigned to the above-mentioned case.

Mark Sendrow  
 LeRoy Johnson  
 Matthew Neubert

Jamie Palfai (Staff Attorney)

Gary Kirst (Staff Investigator)

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