



GALBUT & HUNTER
A PROFESSIONAL CORPORATION
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2003 SEP -4 P 4: 19
September 4, 2003

AZ CORP COMMISSION
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Jeana R. Webster, Esq.
jwebster@galbuthunter.com

Arizona Corporation Commission
DOCKETED

SEP 04 2003

DOCKETED BY	<i>[Signature]</i>
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Via Hand-Delivery

Docket Control Center
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007-2996

Re: Arizona Securities Division Docket No: S-03539A-03-0000

To Whom It May Concern:

Enclosed herewith please find one copy of Respondents Yucatan Resorts, Inc., Yucatan Resorts, S.A., Resort Holdings International, Inc., and Resort Holdings, International, S.A.s' Motion To Quash Subpoenas, Objection To Subpoenas, and Motion To Stay Discovery Pending Further Order.

If you have any questions, please do not hesitate to contact our office.

Very truly yours,

Jeana R. Webster

Jeana R. Webster

Enclosure

- cc: Joel Held, Esq.
Elizabeth Yingling, Esq.
Paul Roshka, Esq.
Tom Galbraith, Esq.
Martin R. Galbut, Esq.
Jeffrey D. Gardner, Esq.

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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2003 SEP -4 P 4:19

ARIZONA CORPORATION COMMISSION
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COMMISSIONERS:

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON

Arizona Corporation Commission
DOCKETED

SEP 04 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

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

MOTION TO QUASH SUBPOENAS,
OBJECTION TO SUBPOENAS, AND
MOTION TO STAY DISCOVERY
PENDING FURTHER ORDER

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

(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)

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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I. INTRODUCTION.

The Arizona Securities Division (the "Division") has, contrary to applicable rules governing this administrative proceeding, issued four subpoenas that involve the very subject matter of this case, under the semblance of conducting "investigations" of certain individuals and businesses who are potential witnesses in this case.

The reality is that the subpoenas are directly related to this precise case, and that the newly minted "investigatory" process is being belatedly utilized by the Division in an effort to do the discovery which it realizes should have been done *before* the case was filed.¹ The Division is attempting to utilize this "investigatory" process to avoid the question of the propriety of discovery in this proceeding, and to gain information in a way that prevents respondents' participation in the cross-examination of witnesses.

The Division's conduct is not authorized by applicable law and is manifestly unfair and prejudicial. Accordingly, the subpoenas must be quashed.

II. THE SUBPOENAS.

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The subpoenas which have been issued by the Division in supposedly new investigations involve, among others, the following people:

1. John Tencza/American Elder Group (*see* Exhibit "1");
2. Janalee Sneva (*see* Exhibit "2");
3. Philip Ohst (*see* Exhibit "3"); and
4. Roy Higgs.

All are potential witnesses in this case. The Division did not serve notice of these subpoenas on counsel in these proceedings.

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¹ The Division should have conducted an investigation, interviewed witnesses, issued investigatory subpoenas before the filing of the cease and desist order.

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III. DISCUSSION.

The Division cannot take testimony and obtain documents in this administrative proceeding (1) without providing notice to respondents, and (2) while excluding respondents and their counsel during the testimony. The rules of Procedure for Practice Before the Commission (the "Commission's Rules"), and the Rules of Civil Procedure for the Superior Court of Arizona require that the Division provide notice and allow respondents or their counsel to be present when formal testimony is taken during an administrative proceeding.

The Division attempts to make it *appear* that these are investigatory subpoenas on some unrelated matter -- not subpoenas issued in this administrative case or under the authority of the Administrative Law Judge -- in an attempt to get these witnesses' documents and testimony without the presence of respondents or their counsels' ability to cross-exam the witnesses, and to continue the "Star Chamber"-like proceedings the Division desires. Indeed, the temporary cease and desist order was issued without any notice or opportunity for a hearing -- a completely draconian approach, effectively putting respondents out of business in the State of Arizona while this proceeding moves on.

Now, the Division wants to gather evidence -- all of which it should have done before this proceeding was ever filed -- because it lacks the support to make its case.

The Division claimed at the last hearing that it would work with respondents to develop a discovery schedule.² The Division has *never* addressed any such discovery with respondents. The Division chose to unilaterally issue a temporary cease and desist order, and has been dragging its feet ever since because it knows that it effectively has put respondents out of business in the State of Arizona during the pendency of this proceeding.³

² Transcript of July 17, 2003 Pre-hearing Conference p. 23, lines 2-5.

³ The Division also claimed that it would file an amended complaint naming a new party. See Pre-hearing Conference Transcript at p. 26, lines 3-11. It did not do so in the time

1 This Administrative Law Judge has already stated that the Securities Division
2 should have done its investigation *before* this case was brought:

3 As I say, the Division brings the case. I don't tell you guys to bring this. If
4 you were short some of the evidence to back up the allegations, then
5 perhaps the case shouldn't have been brought. I imagine you have some
evidence.

6 Transcript of July 17, 2003 Prehearing Conference p. 23, lines 20-24.

7 Further, the Division has a giant hurdle to overcome in this case because it has
8 repeatedly taken the position in prior cases that no discovery is permitted in this type of
9 proceeding. For example, in its July 16, 2003 response to a request for production of
10 documents in another case, the Division said no discovery is permissible:

11 The Division objects to Request Nos. 3 through 6 for three reasons. *First,*
12 *the Division objects on the grounds that there is no right to discovery in an*
13 *administrative contested case proceeding.* A.R.S. § 41-1062(4) states “*no*
14 *subpoenas, depositions or other discovery shall be permitted in contested*
15 *cases except as provided by agency rule or this paragraph.*” Emphasis
added. The Rules of Practice and Procedure Before the Corporation
Commission . . . do not provide for ‘other discovery’, therefore,
16 [respondent] has no right to this information. (Emphasis supplied).

17 See “Security Division’s Response and Objections to [Respondent’s] Second Request for
18 Production of Documents”, July 16, 2003, p. 2, attached hereto as Exhibit “4” (respondent
19 name redacted).

20 In that other case, the Division made it clear that its objective in such an approach
21 was to sidestep the discovery process by obtaining information from witnesses and
22 refusing to disclose that information to respondents, which is fundamentally unfair and
23 prejudicial to respondents in any matter:

24 The Division’s second basis for objection rests on the grounds that
[respondent] seeks information that is protected from disclosure by the

25
26 period it indicated at the conference, and furthermore it attempted to name as a party a
supposed “entity” which does not exist. A separate motion to deny the amendment is
pending on that subject.

1 investigative privilege. *See, e.g., State ex rel. Corbin v. Superior Court*, 99
2 Ariz. 383 (1966); *City of Tucson v. Superior Court*, 167 Ariz. 513 (1991).
3 Documents requested by [respondent] contain information involving
4 investigative techniques and assessments and the identities of witnesses and
5 law enforcement personnel and are thus, subject to the privilege.
6 Furthermore, the confidentiality of Division investigative documents is
7 clear. Under A.R.S. § 44-2042 all information and documents obtained by
8 the Division during the course of “any examination or investigation are
9 confidential unless the names, information or documents are made a matter
10 of public record.” The information [respondent] seeks was obtained during
11 the course of the Division’s investigation of [respondent] and is not a
12 matter of public record.

13 *See* Exhibit “4” at p. 3 (respondent’s name redacted for confidentiality purposes).

14 The Division has invented this tactic to improperly and unilaterally gain discovery
15 in this matter, which is evident on the face of the subpoenas and the Division’s cover
16 letters, in which the subject lines read: “*Re: Offer and Sale of Universal Lease Timeshare
17 Investments.*” The Subpoenas ask for documents relating to “*the offer and sale of
18 Universal Leases or any related Timeshare programs associated with Michael E. Kelly,
19 Resort Holdings International, Yucatan Resorts, Avalon Resorts, World Phantasy Tours,
20 Majesty Travel, and/or Yucatan Investments*”

21 It is apparent that the subpoenaed persons and entities are all potential witnesses in
22 this case. The Division is seeking documents that pertain to *this case*, in that the subpoenas
23 ask for documents and information such as the names and contact information of all
24 individuals who have been offered or sold timeshare interests and the amount and date of
25 each transaction. It asks for financial information from several document sources. This is
26 the very information the Division stated that it wanted to obtain at the last hearing in this
matter:

“Well, Mr. Stern, as you know, there is more to a case than just having
evidence of wrongdoing. It is trying to find out who all the investors are
and full investor lists, things of that nature, financial information.”

1 See Transcript of July 17, 2003 Prehearing Conference p. 23, line 25 to p. 24, lines 1-4.

2 This tactic is a misuse of the administrative processes. The goal of the Division is:

- 3 1. To try to gather information that they should have gathered before the cease
4 and desist order was ever imposed (as they do not have the facts needed to
5 establish their claims);
- 6 2. To restrict and control which lawyers may represent witnesses;
- 7 3. To sidestep the Division's own oft-repeated position that no discovery is
8 allowed, which position has been firmly taken by the Division in a number of
9 similar administrative proceedings in the past; and
- 10 4. To prevent the parties in this case from attending the examination of non-
11 party witnesses as to facts directly related to this case.

12 This is an abuse of applicable statutes and regulations, due process and fundamental fair
13 play.

14 Further, apart from the constitutionality questions associated with these tactics, if
15 any or all of these witnesses want to be represented by attorneys who are already in this
16 case, they are free to do so. For example, John Tenza is already represented by counsel in
17 this case, and that the Division would attempt to exclude him from having such
18 representation in the Division-only deposition, or "formal interview," in which none of the
19 other parties in this case are allowed to participate, is grossly unfair and effectively
20 perverts due process. Janalee Sneva and Philip Ohst may also be represented by counsel in
21 this case, as they have every right to be, and there are no professional limitations on the
22 lawyers prohibiting their participation.

23 The Division attempts to invoke rules which have no application to this proceeding
24 in support of its actions. In the investigation phase (which has long passed and ended
25 when this administrative case was filed), the Division imposes restrictions concerning
26 counsel under Arizona Corporation Commission Rule 14-4-304. But that rule does not

1 apply in this administrative proceeding. Rather, an attempt to compel testimony in an
2 ongoing administrative proceeding is governed by A.A.C. R14-3-109(P).⁴ This provision
3 clearly requires that any depositions in an administrative proceeding must be conducted in
4 accordance with the Rules of Civil Procedure, including those governing notice, and
5 opportunity to participate in the deposition.

6 As a consequence, these subpoenas must be quashed. This Administrative Law
7 Judge holds the power to do so under A.A.C. R14-3-109(P), and because of the application
8 of the Administrative Procedure Act and the Arizona Rules of Civil Procedure. *See also* 16
9 A.R.S. Rules of Civil Procedure Rule 45(3)(A) (permitting the quashing of a subpoena);
10 Ariz. Admin. Code R14-3-109(O)(permitting the quashing of a subpoena by the
11 Commission or a presiding officer, such as an administrative law judge).

12 Courts have held that after an administrative action has been filed, respondents have
13 protectable rights, including the right to have their counsel attend and participate witness
14 depositions. *See Babbit v. Herndon*, 119 Ariz. 454, 456, 581 P.2d 688, 690 (1978). The
15 only time investigative subpoenas are valid is *before* an action is initiated. The *Herndon*
16 court, in discussing a subpoena enforcement hearing, placed the investigative subpoena in
17 its proper context:

18 By contrast, while a subpoena enforcement hearing must be regarded as a
19 judicial proceeding, it cannot be characterized as a "case" or "suit". . . The
20 hearing takes place prior to the filing of a complaint at a stage of the
21 proceedings when the Attorney General is attempting only to determine
22 whether there is sufficient evidence to warrant the filing of a complaint.
23 The subpoena enforcement hearing is merely an incidental judicial adjunct
24 to what is still the administrative investigatory stage of the proceedings.

25 ⁴ This regulation states: "Depositions. The Commission, a Commissioner, or any party to
26 any proceeding before it may cause *the depositions of witnesses to be taken in the manner
prescribed by law and of the civil procedure for the Superior Court of the state of
Arizona.*" (Emphasis supplied).

1 *Herndon*, 119 Ariz. at 457 (emphasis added). Thus, investigational subpoenas are only
2 properly used *prior* to the instigation of an administrative proceeding.

3 In this case, the matters sought to be discovered under the guise of separate
4 investigations are the subject of *this* ongoing proceeding, where one or more of the
5 subpoenaed parties are or will be represented by counsel in this matter. Therefore, the
6 disclosure of material related to this proceeding, whether by document production or the
7 deposition of witnesses without the presence of counsel in this matter, cannot lawfully be
8 forced by these subpoenas. This tactic is simply improper and unlawful.

9 Further, one or more of these witnesses are already represented by counsel in this
10 matter. If forced to submit to the process sought by the Division, the witnesses will be
11 subjected to undue burden. They will be unnecessarily inconvenienced and will incur
12 substantial expense, in that they will be required to engage and pay for additional counsel
13 to represent them at the investigative examination under oath and perhaps later at a
14 deposition (if ordered) or at the hearing.

15 Improper purposes are grounds for quashing the subpoena. *See Carrington v.*
16 *Arizona Corp. Comm'n*, 199 Ariz. 303, 305, 18 P.3d 97, 99 (Ct. App. 2001). Respondents
17 have demonstrated that the Division's use of the investigational subpoenas is improper.
18 Therefore, the subpoenas must be quashed.

19 IV. CONCLUSION.

20 The attempt to sidestep the proper administrative process in this matter should be
21 rejected. It is a misuse of the subpoena power by the Division. The Administrative Law
22 Judge should intervene and enforce the law and do justice.

23 To the extent that discovery is going to occur in this case, that subject should be
24 brought before your Honor, and decisions made in a proper context. The Administrative
25 Law Judge should take control of these discovery issues and enter the appropriate orders so
26 that fairness, due process and justice occurs in this case.

1 In the meantime, given the many pending motions, *all* discovery should be stayed
2 until further order, and the subpoenas quashed.

3 RESPECTFULLY SUBMITTED, this 4th day of September, 2003.

4 GALBUT & HUNTER
5 A Professional Corporation

6 

7 Martin R. Galbut
8 Jeana R. Webster
9 Jeffrey D. Gardner
10 Camelback Esplanade
11 2425 E. Camelback Road
12 Suite 1020
13 Phoenix, Arizona 85016
14 Attorneys for Respondents
15 Yucatan Resorts, Inc., Yucatan
16 Resorts S.A. RHI, Inc., and RHI, S.A.

17 Joel Held, Esq.
18 Elizabeth Yingling, Esq.
19 Baker & McKenzie
20 2300 Trammell Crow Center
21 2001 Ross Avenue – Ste.2300
22 Dallas, Texas 75201
23 Attorneys for Respondent
24 Yucatan Resorts, Inc., Yucatan Resorts,
25 S.A., RHI, Inc., and RHI, S.A.

26 ORIGINAL and thirteen copies of the foregoing
hand-delivered this 4th day of September, 2003 to:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007
COPY of the foregoing hand-delivered
this 4th day of September, 2003 to:

1 Marc Stern, Esq.
2 Administrative Law Judge
3 Hearing Division
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Jaime Palfai, Esq.
8 W. Mark Sendrow, Esq.
9 Securities Division
10 Arizona Corporation Commission
11 1300 West Washington Street, 3rd Floor
12 Phoenix, Arizona 85007

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COPY of the foregoing sent *via* U.S. Mail
this 4th day of September, 2003 to:

12 Paul J. Roshka, Jr., Esq.
13 Dax Watson, Esq.
14 One Arizona Center
15 400 East Van Buren Street, Suite 800
16 Phoenix, Arizona 85004
17 Attorneys for Respondents
18 Michael and Lori Kelly

19 Tom Galbraith, Esq.
20 Kirsten Copeland, Esq.
21 Meyer, Hendricks & Bivens, P.A.
22 3003 N. Central Avenue, Suite 1200
23 Phoenix, Arizona 85012-2915
24 Attorneys for Respondent
25 World Phantasy Tours, Inc.

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By: 
Jeana R. Webster, Esq.

EXHIBIT 1

SUBPOENA
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

TO: John E. TENCZA
American Elder Group L.L.C.
7779 E.Nestling Way
Scottsdale, Arizona 85255

In the Matter of

American Elder Group, et al.

involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.

YOU ARE HEREBY REQUIRED to appear before Jamie PALFAI of the SECURITIES DIVISION of the ARIZONA CORPORATION COMMISSION at 1300 WEST WASHINGTON, THIRD FLOOR, PHOENIX, ARIZONA 85007, on the 5th day of September, 2003, at 10:00 o'clock a.m., to PROVIDE TESTIMONY AND PRODUCE THE DOCUMENTS LISTED IN EXHIBIT "A" WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 25th day of August, 2003.

LeRoy Johnson
Director of Enforcement
Securities Division

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

Exhibit A

From the period beginning January 1999 to the present, all documents, records, books, and any other papers, whether stored on electronic media or otherwise, incident or relating to the offer and sale of Universal Leases or any related Timeshare programs associated with Michael E. Kelly, Resort Holdings International, Yucatan Resorts, Avalon Resorts, World Phantasy Tours, Majesty Travel, and/or Yucatan Investments including, but not limited to:

1. Names, addresses, and telephone numbers of all individuals, sales agents or entities that have been offered or sold timeshare interests including the number of interests purchased, if applicable, and the amount and date of each investment;
2. Documents relating to each individual or entity listed in paragraph [1] including any contracts, forms, subscriptions, agreements, notes, questionnaires, reports, records of investment status, checks, wire transfers, receipts, account statements, tax information, correspondence, updates, or other communications;
3. Records of all meetings and/or training sessions related to solicitations and sales including all information used or presented at these meetings;
4. The names, addresses, amounts, and dates of any rescission, refund, or any other form of return to timeshare purchasers;
5. All state and federal tax returns, including any applications, forms, or correspondence;
6. All bank or other depository institution accounts whether open or closed, including the name of the bank or depository institution, number of each account, and the names of all signatories on each account;
7. All advertisements, correspondence, circulars, offering memoranda, newsletters, prospectuses, tax opinions, legal opinions, reports, brochures, flyers, handouts, or any other records made available to potential or actual timeshare purchasers;

8. Contracts with agents or others for solicitations or sales of timeshare interests including but not limited to employment contracts, independent contractor agreements, and any communications with such person or entity;
9. Names, addresses and telephone numbers of all affiliated sales agents, co-workers, telephone solicitors, independent contractors, or sub-contractors, both past and present;
10. Records of all salaries, bonuses, reimbursement, distributions, draws, overrides, loans, or any other compensation, whether monetary or otherwise, paid to you, any related person/entity, or any individual falling within the scope of paragraphs [8] or [9] above;
11. Records of all salaries, bonuses or other consideration received or distributed by you and/or your firm.

R14-4-304. Rights of witnesses; formal interview; procedures

A. Any person required or requested to appear as a witness at a formal interview may be accompanied, represented, and advised by a lawyer. The lawyer's roll during the formal interview shall be limited to the following activities:

1. Giving legal advice to the witness before, during, and after the formal interview;
2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given; and
3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.

B. Notwithstanding Subsection (A), the following lawyers may not represent witnesses:

1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation,
2. Any lawyer who has represented another person who is a subject of the examination or investigation,
3. Any lawyer who may be a material witness in the examination or investigation,
4. Any lawyer who is subject of the examination or investigation.

C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under Subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.

D. All formal interviews may be recorded by the Division either mechanically or by a shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking.

E. In addition to the persons identified in subsections (A), (C), and (D), the following individuals may attend a formal interview:

1. Individuals employed by the Commission or the office of the attorney general.
2. Members of law enforcement or other state, federal, or self-regulatory agencies authorized by the Division.
3. Translators authorized by the Division.

F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.

G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if, in the Director's discretion, the Director determines that earlier inspection may obstruct or delay the examination or investigation.

H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.

I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

EXHIBIT 2

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p. 3

SUBPOENA
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

TO: Sneva Alliance
Janalee Ranney Sneva
1843 East La Jolla
Tempe, Arizona 85282

In the Matter of
Janalee Ranney Sneva., et al.

**involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.**

YOU ARE HEREBY REQUIRED to appear before Jamie Palfai of the SECURITIES DIVISION of the ARIZONA CORPORATION COMMISSION at 1300 WEST WASHINGTON, THIRD FLOOR, PHOENIX, ARIZONA 85007, on the 17th day of September, 2003, at 10:00 o'clock a.m., to PROVIDE TESTIMONY AND PRODUCE THE DOCUMENTS LISTED IN EXHIBIT "A" WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 25th day of August, 2003.

A handwritten signature in black ink, appearing to read 'LeRoy Johnson', is written over a horizontal line.

LeRoy Johnson
Director of Enforcement
Securities Division

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

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Exhibit A

From the period beginning January 1999 to the present, all documents, records, books, and any other papers, whether stored on electronic media or otherwise, incident or relating to the offer and sale of Universal Leases or any related Timeshare programs associated with Michael E. Kelly, Resort Holdings International, Yucatan Resorts, Avalon Resorts, World Phantasy Tours, Majesty Travel, and/or Yucatan Investments including, but not limited to:

1. Names, addresses, and telephone numbers of all individuals, sales agents or entities that have been offered or sold timeshare interests including the number of interests purchased, if applicable, and the amount and date of each investment;
2. Documents relating to each individual or entity listed in paragraph [1] including any contracts, forms, subscriptions, agreements, notes, questionnaires, reports, records of investment status, checks, wire transfers, receipts, account statements, tax information, correspondence, updates, or other communications;
3. Records of all meetings and/or training sessions related to solicitations and sales including all information used or presented at these meetings;
4. The names, addresses, amounts, and dates of any rescission, refund, or any other form of return to timeshare purchasers;
5. All state and federal tax returns, including any applications, forms, or correspondence;
6. All bank or other depository institution accounts whether open or closed, including the name of the bank or depository institution, number of each account, and the names of all signatories on each account;
7. All advertisements, correspondence, circulars, offering memoranda, newsletters, prospectuses, tax opinions, legal opinions, reports, brochures, flyers, handouts, or any other records made available to potential or actual timeshare purchasers;

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8. Contracts with agents or others for solicitations or sales of timeshare interests including but not limited to employment contracts, independent contractor agreements, and any communications with such person or entity;
9. Names, addresses and telephone numbers of all affiliated sales agents, co-workers, telephone solicitors, independent contractors, or sub-contractors, both past and present;
10. Records of all salaries, bonuses, reimbursement, distributions, draws, overrides, loans, or any other compensation, whether monetary or otherwise, paid to you, any related person/entity, or any individual falling within the scope of paragraphs [8] or [9] above;
11. Records of all salaries, bonuses or other consideration received or distributed by you and/or your firm.

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R14-4-304. Rights of witnesses; formal interview; procedures

A. Any person required or requested to appear as a witness at a formal interview may be accompanied, represented, and advised by a lawyer. The lawyer's roll during the formal interview shall be limited to the following activities:

1. Giving legal advice to the witness before, during, and after the formal interview;
2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given; and
3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.

B. Notwithstanding Subsection (A), the following lawyers may not represent witnesses:

1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation,
2. Any lawyer who has represented another person who is a subject of the examination or investigation,
3. Any lawyer who may be a material witness in the examination or investigation,
4. Any lawyer who is subject of the examination or investigation.

C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under Subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.

D. All formal interviews may be recorded by the Division either mechanically or by a shorthand reporter employed by the Division. No other recording of the formal interview will be permitted, except summary note taking.

E. In addition to the persons identified in subsections (A), (C), and (D), the following individuals may attend a formal interview:

1. Individuals employed by the Commission or the office of the attorney general.
2. Members of law enforcement or other state, federal, or self-regulatory agencies authorized by the Division.
3. Translators authorized by the Division.

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F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.

G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if, in the Director's discretion, the Director determines that earlier inspection may obstruct or delay the examination or investigation.

H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.

I. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

EXHIBIT 3

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002

SUBPOENA

SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

TO: Phillip Robert OHST
1837 West Claremont Street
Phoenix, Arizona 85015

In the Matter of

Phillip Ohst, et al.

involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.

YOU ARE HEREBY REQUIRED to appear before Jamie Palfai of the SECURITIES DIVISION of the ARIZONA CORPORATION COMMISSION at 1300 WEST WASHINGTON, THIRD FLOOR, PHOENIX, ARIZONA 85007, on the 18th day of September, 2003, at 10:00 o'clock a.m., to PROVIDE TESTIMONY AND PRODUCE THE DOCUMENTS LISTED IN EXHIBIT "A" WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 25th day of August, 2003.

A handwritten signature in black ink, appearing to read "LeRoy Johnson", is written over a horizontal line.

LeRoy Johnson
Director of Enforcement
Securities Division

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

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Exhibit A

From the period beginning January 1999 to the present, all documents, records, books, and any other papers, whether stored on electronic media or otherwise, incident or relating to the offer and sale of Universal Leases or any related Timeshare programs associated with Michael E. Kelly, Resort Holdings International, Yucatan Resorts, Avalon Resorts, World Phantasy Tours, Majesty Travel, and/or Yucatan Investments including, but not limited to:

1. Names, addresses, and telephone numbers of all individuals, sales agents or entities that have been offered or sold timeshare interests including the number of interests purchased, if applicable, and the amount and date of each investment;
2. Documents relating to each individual or entity listed in paragraph [1] including any contracts, forms, subscriptions, agreements, notes, questionnaires, reports, records of investment status, checks, wire transfers, receipts, account statements, tax information, correspondence, updates, or other communications;
3. Records of all meetings and/or training sessions related to solicitations and sales including all information used or presented at these meetings;
4. The names, addresses, amounts, and dates of any rescission, refund, or any other form of return to timeshare purchasers;
5. All state and federal tax returns, including any applications, forms, or correspondence;
6. All bank or other depository institution accounts whether open or closed, including the name of the bank or depository institution, number of each account, and the names of all signatories on each account;
7. All advertisements, correspondence, business cards, circulars, offering memoranda, newsletters, prospectuses, tax opinions, legal opinions, reports, brochures, flyers, handouts, or any other records made available to potential or actual timeshare sales agents or purchasers;

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8. Contracts with agents or others for solicitations or sales of timeshare interests including but not limited to employment contracts, independent contractor agreements, and any communications with such person or entity;
9. Names, addresses and telephone numbers of all affiliated sales agents, co-workers, telephone solicitors, independent contractors, or sub-contractors, both past and present;
10. Records of all salaries, bonuses, reimbursement, distributions, draws, sales overrides, loans, or any other compensation, whether monetary or otherwise, paid to you, any related person/entity, or any individual falling within the scope of paragraphs [8] or [9] above;
11. Records of all salaries, bonuses or other consideration received or distributed by you and/or your business.

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R14-4-304. Rights of witnesses; formal interview; procedures

A. Any person required or requested to appear as a witness at a formal interview may be accompanied, represented, and advised by a lawyer. The lawyer's roll during the formal interview shall be limited to the following activities:

1. Giving legal advice to the witness before, during, and after the formal interview;
2. Questioning the witness briefly at the conclusion of the formal interview for the purpose of clarifying any testimony the witness has given; and
3. Making summary notes during the formal interview solely for the use of the witness and the lawyer.

B. Notwithstanding Subsection (A), the following lawyers may not represent witnesses:

1. Any lawyer who has represented another witness who has testified at a formal interview in the examination or investigation,
2. Any lawyer who has represented another person who is a subject of the examination or investigation,
3. Any lawyer who may be a material witness in the examination or investigation,
4. Any lawyer who is subject of the examination or investigation.

C. The Director may permit a lawyer to represent a witness in those situations described in subsections (B)(1) through (B)(4) upon a showing that such representation should be permitted in the interest of justice and will not obstruct the examination or investigation. If a lawyer is not permitted to represent a witness under Subsection (B), that lawyer's partners or associates of the lawyer's law firm are also precluded from representing the witness.

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1. Individuals employed by the Commission or the office of the attorney general.
2. Members of law enforcement or other state, federal, or self-regulatory agencies authorized by the Division.
3. Translators authorized by the Division.

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F. The Division may exclude from a formal interview any person previously permitted to attend the formal interview, including a lawyer, whose conduct is dilatory, obstructionist, or contumacious. In addition, the members of the staff of the Division conducting the formal interview may report the conduct to the Director for appropriate action. The Director may thereupon take such further action as circumstances may warrant, including, but not limited to, exclusion from further participation in the examination or investigation.

G. A person who has submitted documentary evidence or testimony in connection with a formal interview shall be entitled, upon written request, and upon proper identification, to inspect the witness' own testimony on a date to be set by the Director. The Director may delay the inspection of the record until the conclusion of the examination or investigation if, in the Director's discretion, the Director determines that earlier inspection may obstruct or delay the examination or investigation.

H. In connection with an examination or investigation, the Director may delegate authority to members of the staff to administer oaths and affirmations, sign subpoenas, take evidence, and receive books, papers, contracts, agreements or other documents, records, or information, whether filed or kept in original or copied form or electronically stored or recorded.

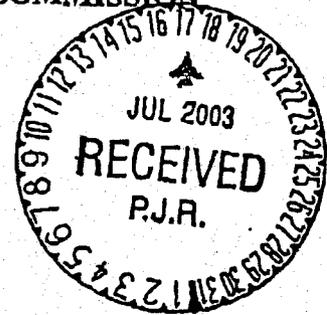
L. During a formal interview, a witness shall not knowingly make any untrue statements of material fact or omit to state any material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

EXHIBIT 4

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2
3 COMMISSIONERS

4 MARC SPITZER, Chairman
5 JIM IRVIN
6 WILLIAM A. MUNDELL
7 JEFF HATCH-MILLER
8 MIKE GLEASON



7 In the matter of: _____
8 _____
9 Respondent.
10 _____

DOCKET NO. _____

11 SECURITIES DIVISION'S RESPONSE AND OBJECTIONS
12 TO MUTUAL BENEFITS CORPORATION'S
13 SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

14 The Securities Division ("Division") of the Arizona Corporation Commission hereby
15 responds to _____ Second Request for Production of
16 Documents (the "Request") and produces or otherwise objects to the Request as follows:

- 17 1. "A copy of the SEC order of disgorgement and penalties of \$950,000 against
18 _____ referred to in the letter dated June 16, 2003, from Mark Sendrow to
19 _____ (the "Letter")...." FN 1 "On this date, counsel for _____
20 wrote to Mr. Sendrow requesting that the information sought by this Request
21 (see Exhibit "B") be provided informally.

22 The Division provided its response to _____ on July 14, 2003. A copy of that response is
23 attached as Exhibit A along with the SEC's order attached as Exhibit B.

- 24 2. "All documents referring or relating to the order referred to in paragraph 1
25 above."

26 The Division will provide the requested documents to _____ under separate cover.

3. "All documents upon which the Securities Division Staff, or others working
under the Securities Division's direction and control, or in concert with it,
relied in connection with making of one or more statements to the effect that
the SEC had entered an order of disgorgement and penalties of \$950,000
against _____ as referenced in the Letter."

1 The Division will provide certain of the requested documents to [REDACTED] under separate cover.
2 However, other documents covered by the request will not be provided on the basis of the
3 objections set forth below.

- 4 4. "Documents sufficient to identify all persons whom the Securities Division, its
5 investigators, agents or employees contacted and informed of the order,
6 referred to in Exhibit "A," against [REDACTED]"
- 7 5. "Documents sufficient to identify the Securities Division's investigators, agents
8 and employees who made the contacts referred to in Paragraph No. 3 above.
- 9 6. "All documents used or created by the Securities Division, its investigators,
10 agents or employees, during interviews of or communications with the persons
11 identified in paragraph 3 above, including but not limited to:
- 12 (i) all scripts or other outlines used in the questioning of such persons,
 - 13 (ii) all notes taken during the course of the interviews or communications;
 - 14 (iii) copies of all audio recordings made during the course of the interviews
or communications; and
 - (iv) all documents relied on or referred to by the Securities Division, its
investigators, agents or other employees during the course of the
interviews or communications."

15 The Division objects to Request Nos. 3 through 6 for three reasons. First, the Division
16 objects on the grounds that there is no right to discovery in an administrative contested case
17 proceeding. A.R.S. § 41-1062(4) states "no subpoenas, depositions or other discovery shall be
18 permitted in contested cases except as provided by agency rule or this paragraph." Emphasis added.
19 The Rules of Practice and Procedure Before the Corporation Commission (the "Commission's
20 Rules") do not provide for "other discovery", therefore, [REDACTED] has no right to this information.
21 While [REDACTED] may argue that the Arizona Rules of Civil Procedure ("ARCP") apply to this
22 proceeding because the Commission's Rules do not set forth a procedure for "other discovery, this
23 is not the case. Commission Rule R14-3-101 states that "[i]n all cases in which procedure is set
24 forth neither by law, nor by these rules, nor by regulations or orders of the Commission, the Rules
25 of Civil Procedure...shall govern." In this case the ARCP does not apply because by law "other
26 discovery is not permitted under A.R.S. §41-1062(4).

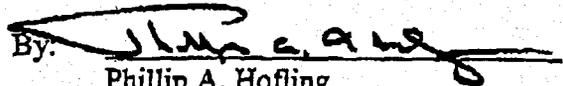
1 The Division's second basis for objection rests on the grounds that [REDACTED] seeks information
2 that is protected from disclosure by the investigative privilege. See, e.g., *State ex rel. Corbin v.*
3 *Superior Court*, 99 Ariz. 383 (1966); *City of Tucson v. Superior Court*, 167 Ariz. 513 (1991).
4 Documents requested by [REDACTED] contain information involving investigative techniques and
5 assessments and the identities of witnesses and law enforcement personnel and are thus, subject to
6 the privilege. Furthermore, the confidentiality of Division investigative documents is clear. Under
7 A.R.S. § 44-2042 all information and documents obtained by the Division during the course of
8 "any examination or investigation are confidential unless the names, information or documents are
9 made a matter of public record." The information [REDACTED] seeks was obtained during the course of
10 the Division's investigation of MBC and is not a matter of public record.

11 Finally, the Division objects on the grounds that [REDACTED] seeks information that is protected
12 from disclosure by the work product privilege. "The privilege ... prevents an adversary from
13 obtaining documents which contain the mental impressions, conclusions, opinions or legal theories
14 of an attorney or other representative of a party concerning the litigation." *State ex rel. Corbin v.*
15 *Superior Court*, 140 Ariz. 123, 129, 680 P.2d 833, 830 Ariz. App. 1984. See, also, *Brown v.*
16 *Superior Court In and For Maricopa County*, 137 Ariz. 327 (1983). The documents or other things
17 requested by [REDACTED] were prepared by the Division and contain staff interpretations and/or mental
18 impressions of investors' investment experiences with [REDACTED]. These interviews and discussions
19 were conducted in anticipation of litigation and/or preparation for hearing.

20 With regard to request No. 6(iv), to the extent that such request is limited to the issue of the
21 SEC order as discussed in the Letter, the Division's will provide a response under separate cover.
22 Otherwise, the Division objects to this request for the reasons set forth in the preceding paragraphs
23 and on the grounds that the request is overbroad and not relevant. By its own filing, [REDACTED] has
24 narrowly defined the issue it seeks information about, that is, documents relating to the SEC order.
25 [REDACTED] request goes far beyond that issue and constitutes nothing more than a fishing expedition.
26 ...

1 RESPECTFULLY SUBMITTED this 16th day of July, 2003.

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By: 
Phillip A. Hofling
Attorney for the Securities Division of
the Arizona Corporation Commission

ORIGINAL AND THIRTEEN (13) COPIES
of the foregoing filed this 16th day of July, 2003 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered this 16th day
of July, 2003, to:

Mr. Marc Stern
Administrative Law Judge
Arizona Corporation Commission
Hearing Division
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing mailed this 16th day
of July, 2003, to:

Paul J. Roshka, Jr. Esq.
Alan S. Baskin, Esq.
James M. McQuire, Esq.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

By: 