

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

**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 )  
)  
**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 )  
)

**DOCKET NO. S-03539A-03-0000**

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

Respondents. \_\_\_\_\_)

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**  
**EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that Respondents Yucatan Resorts, Inc., (d/b/a Yucatan Resorts, S.A.), Resort Holdings International, Inc., (d/b/a Resort Holdings International, S.A.), World Phantasy Tours (a/k/a Majesty Travel and Viajes Majesty), Michael E. Kelly, and Lori Kelly have engaged in or are about to engage in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”), and that immediate action is required in the name of public welfare.

**I.**

**JURISDICTION**

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

**II.**

**RESPONDENTS**

2. Respondent Yucatan Resorts, Inc., d/b/a Yucatan Resorts, S.A., (“YUCATAN”), is an international corporation operating a purported timeshare program based out of Cancun, Mexico. The company’s last known United States business address is 3222 Mishawaka Avenue, South Bend, Indiana, 46615, along with mailing address P.O. Box 2661, South Bend, Indiana, 46680.

3. Respondent Resort Holdings International, Inc., d/b/a Resort Holdings International, S.A., (“RHI”), is a YUCATAN affiliate and the primary distributor for the YUCATAN timeshare program. In this capacity, RHI provides promotional services and is responsible for the recruitment of YUCATAN sales agents. RHI’s last known United States business address is also 3222 Mishawaka Avenue, South Bend, Indiana, 46615, along with mailing address P.O. Box 2661, South Bend, Indiana, 46680.



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

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

8 14. Although several different company brochures and promotional materials are distributed to  
9 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 never  
11 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 to tell  
13 prospective investors that the investment funds are "basically being used" to purchase more resort  
14 properties, indicating at least some investor funds are being pooled to provide financing for new  
15 acquisitions.

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

20 17. A YUCATAN recruiter informed prospective salesmen that approximately 40 percent of all  
21 funds coming through the Universal Lease Program will originate out of investor IRAs or other similar  
22 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 separate  
25 Universal Lease "options." In actuality, options 1 and 2 are illusory choices, effectively leaving option 3  
26 as sole Universal Lease Program alternative.

1 19. Evidencing this point, recruiters for prospective YUCATAN sales agents coach their trainees  
2 that the Universal Lease's "third option," *i.e.* the investment selection, is the only selection that need be  
3 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 option,  
6 RHI assigns to the investor, at RHI's own choosing, a specific unit, for a specific week,<sup>1</sup> and at a specific  
7 location, and only after the \$5,000 sum (or more) is received by RHI. The investor has no input into the  
8 date, quality or location of this timeshare assignment.

9 21. Moreover, the Option 1 purchaser must pay annual management fees to RHI for this particular  
10 election, ranging from \$380 to \$645 per year (with such amounts subject to Consumer Price Index  
11 increases). This translates into an RHI surcharge of \$9,000 to \$16,125 (or more) over the life of the 25  
12 year timeshare lease. For a \$5,000 purchaser, this would ultimately equate to a total payment of at least  
13 \$14,000 in return for 12 weeks of timeshare access (over a 25 year period) at an undisclosed location  
14 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 to  
20 rent out assigned timeshare units themselves, contains many of the same prohibitive costs and conditions  
21 as that of Option 1. This Option again requires the purchaser to forego any guaranteed investment  
22 returns, and instead imposes substantial annual maintenance fees on the purchaser for the full 25 year  
23 lease term. Prospective Option 2 purchasers must also await a determination by RHI, after the purchase  
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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 has been made, as to the location, resort type and permitted dates of use for the timeshare. The  
2 undesirability of this selection is further conveyed by RHI's brochure warning that this self-renting option  
3 will not bring in the same level of revenues as would a professional third party servicing agent.

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

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

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

21 27. For an investor to reap the 9 percent per annum return under this Universal Lease option, the  
22 investor was required, as part of his investment, to hire a "third party" management company to lease the  
23 investor's timeshare unit. The YUCATAN materials identify WORLD PHANTASY as the designated  
24 management company for this servicing function. Although the Universal Lease application does not  
25 mandate the selection of WORLD PHANTASY as the investors' servicing agent, such a selection is the  
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1 only listed means under which investors can earn the promised 9 per cent rate of return on their Universal  
2 Lease investments.

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

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

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

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

21 32. According to the YUCATAN and RHI marketing literature, Option 3 of the Universal Lease  
22 provides a multitude of advantages to more traditional investments. The most prominent of these, as  
23 demonstrated during a promotional power point presentation delivered by KELLY, is that the Universal  
24 Lease Program provides a far superior rate of return than most other investments. A second claim is that  
25 the Universal Lease is supported by "debt-free" resort properties, and that as a result the YUCATAN  
26 investments are fully safe and secured.

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

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

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

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

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

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

25       39. Marketing materials provided to investors by the above-referenced YUCATAN sales agents  
26 indicated that "the [YUCATAN] properties were fully insured against loss. All properties are in

1 compliance [with] the governing laws. Being in compliance with the regulations to sell leases, all  
2 properties are 100% free of debt. As a result, the Leaseholders have a first lien on the YUCATAN  
3 resort properties.”

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

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

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

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

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

23 45. YUCATAN was the subject of an administrative order of the Wisconsin Securities Division on  
24 March 3, 2001, for the sale of unregistered securities by unlicensed agent and by unlicensed broker-  
25 dealers and of the anti-fraud provision of Wisconsin securities law.  
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1 46. YUCATAN was also the subject of an administrative order by Oklahoma Department of  
2 Securities in August, 2001, arising out of possible violations of the Oklahoma Securities Act.

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

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

9 **IV.**

10 **VIOLATION OF A.R.S. § 44-1841**

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

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

14 50. The securities referred to above were not registered pursuant to the provisions of Articles 6 or  
15 7 of the Securities Act.

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

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22 **V.**

23 **VIOLATION OF A.R.S. § 44-1842**

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

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

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

2 **VI.**

3 **VIOLATION OF A.R.S. § 44-1991**

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

5 54. In connection with the offer or sale of securities within or from Arizona, RESPONDENTS  
6 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of  
7 material fact or omitted to state material facts which were necessary in order to make the statements  
8 made not misleading in light of the circumstances under which they were made; and (iii) engaged in  
9 transactions, practices or courses of business which operated or would operate as a fraud or deceit upon  
10 offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

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

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

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

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21 d) RESPONDENTS failed to disclose to investors that administrative orders reflecting prior  
22 securities violations have been issued against RESPONDENTS in several other jurisdictions.

23 55. This conduct violates A.R.S. § 44-1991.

24 **VII.**

25 **TEMPORARY ORDER**

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## HEARING OPPORTUNITY

1  
2 All Respondents may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-307.  
3 **If any Respondent or Respondent Spouse requests a hearing, the Respondent or Respondent**  
4 **Spouse must also answer this Temporary Order and Notice.** A request for hearing must be in  
5 writing and received by the Commission within 20 business days after service of this Notice of  
6 Opportunity for Hearing. Each Respondent must deliver or mail the request to Docket Control, Arizona  
7 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover  
8 sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket  
9 Control by calling (602) 542-3477 or on the Commission's Internet web site at  
10 [www.cc.state.az.us/utility/forms/index.htm](http://www.cc.state.az.us/utility/forms/index.htm).

11 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 10 to  
12 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or  
13 ordered by the Commission. **Notwithstanding the effective 180 day time period cited above, this**  
14 **Temporary Order shall remain in effect from the date a hearing is requested until a decision is**  
15 **entered, unless otherwise ordered by the Commission.** After a hearing, the Commission may  
16 vacate, modify, or make permanent this Temporary Order with written findings of fact and conclusions of  
17 law. A permanent Order may include an order of restitution, administrative penalties, and/or other  
18 affirmative action.

19 If a request for a hearing is not timely made, the Division will request that the Commission make  
20 permanent this Temporary Order, with written findings of fact and conclusions of law. These conclusions  
21 of law may include an order for restitution, administrative penalties and/or other relief.

22 Persons with a disability may request a reasonable accommodation such as a sign language  
23 interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood,  
24 Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail  
25 [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  
26 accommodation.

**X.**

**ANSWER REQUIREMENT**

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

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

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

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

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

Dated this 20th day of May, 2003.

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/s/ Mark Sendrow  
Mark Sendrow  
Director of Securities