ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242
(602) 255-2600
FAX: (602) 255-2617

December 17, 1991

I. Douglas Dunipace, Esq.
Jennings, Strouss & Salmon
One Renaissance Square
Two N. Central
Phoenix, Arizona 85004-2393

RE: Rainbow Retreats, Inc.
A.R.S. § 44-1801(22)

Dear Mr. Dunipace:

On the basis of the facts and undertakings set forth in your letters of December 13, 1991, September 30, 1991 and August 7, 1991 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts and undertakings set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letters. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:MGB:wjw

Attachment

JENNINGS, STROUSS & SALMON
ATTORNEYS AT LAW

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WRITER'S DIRECT LINE

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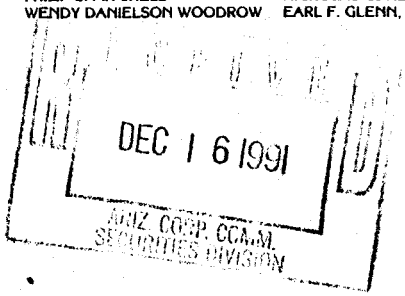
December 13, 1991



Ms. Sara Ziskin
Assistant Director for Corporation Finance
Arizona Corporation Commission
Securities Division
234 N. Central Avenue, Suite 425
Phoenix, Arizona 85004

RE: Rainbow Retreats, Inc.

Dear Sara:

This letter supplements my previous letters of August 7, 1991 and September 30, 1991 and is intended to respond to the question raised as a result of the recent meeting in your office with Dee Harris and other members of the staff. Following that meeting, Mike Burton of your office, indicated that the division would issue a no action letter to Rainbow Retreats, Inc. if you received two undertakings on behalf of the applicant.

I am pleased to advise you that I have received written authorization from our client to provide the requested undertakings which are as follows:

1. Rainbow Retreats, Inc., in connection with the marketing and sale of leaseholds, will not emphasize the future resale potential of the leaseholds. They have assured me that it is contrary to their overall philosophy to advocate the purchase of leaseholds or lots as a potential investment. Their entire marketing thrust is and will continue to be the creation of a unique community lifestyle for their Escapees members.

2. The development and marketing of leasehold interests in their Arizona project will be subject to subdivision laws and regulations adminstered through the Arizona Real Estate Department and Rainbow Retreats, Inc. intends fully to comply with those laws and regulations.

I trust that the foregoing satisfies the conditions that Mike Burton described to me. If you require any further amplification or explanation, please let me know. Otherwise, I look forward to receipt of the requested no action letter.

Very truly yours,

JENNINGS, STROUSS & SALMON

By I. Douglas Dunipace

IDD:pap
LT015IDD-D

xc: Rainbow Retreats, Inc.

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September 30, 1991

Sara R. Ziskin
Assistant Director for Corporation Finance
Securities Division
Arizona Corporation Commission
234 N. Central Avenue, Suite 425
Phoenix, Arizona 85004

OCT - 1

RE: Rainbow Retreats, Inc.

Dear Sara:

This letter supplements my letter of August 7, 1991 and is intended to respond to the question raised during the recent telephone conversation between me and you and Mike Burton of your office.

Condominium vs. Membership Precedent.

Your first question was why my original letter analogized the proposed activities of Rainbow Retreats, Inc. ("Rainbow") to the cases and releases relating to condominiums and cooperatives rather than to precedent in the recreational membership area. My primary reason for this approach is the fact that the leaseholds here are much more like a condominium interest than a recreational club membership. Most of the reported SEC releases on recreational memberships involve no residential aspect whatsoever. See, e.g., Bear's Paw Country Club, 1980 Fed. Sec. Law Rptr. ¶76,426 (membership in country club not a security); Riviera Operating Company, 1978 Fed. Sec. Law Rptr. ¶81,569 (tennis club membership may be a security); Riverview Racquet Club, Inc., '75-'76 Fed. Sec. Law Rptr ¶80,276 (tennis club membership not a security); Recreation Unlimited, '70-'71 Fed. Sec. Law Rptr. ¶78,129 (recreation permit not a security). The Rainbow program emphasizes the "home base" nature of the leaseholds being offered and not the recreational amenities.

A second reason for using the condominium approach is the courts' tendency to apply the classic condominium securities tests to a membership arrangement if some type of real estate interest is involved. An example is Cameron v. Outdoor Resorts of America, Inc., (M.D. Fla, 1979) '79-'80 Fed. Sec. Law Rptr. ¶97,210, in which condominium campsites were sold in multiple lot units. Obviously, the buyer there could not personally use all the lots purchased and had to rely on the exclusive agent to lease the unused lots. By contrast, Rainbow will lease only one lot to each family for personal use and will have no rental pool or other arrangement to suggest that the lessor should be thinking about trying to make money by renting the lot when not otherwise in use.

I am aware of Professional Economic Services, Inc., '71-'72 Fed. Sec. Law Rptr. ¶78,793 which was one of the very first efforts by the SEC to enunciate a position in the context of a lease or sale of lots within a recreation complex. The SEC staff, without citing any reasons, was unwilling to conclude that there was no security involved. Quite honestly, I believe that the Professional Economic Services, Inc. no-action response is no longer good law and has been superceded by later no-action positions and releases. See, e.g., SEC Release No. 33-5347 (April 9, 1973) which was issued a year after Professional Economic Services, Inc., and discusses the legal rationale applicable to offerings of real estate interests. Similarly, if you wish to take the recreational membership approach, one of the last pronouncements of the SEC in that line of authorities was Bear's Paw Country Club, supra. Except for the fact that Bear's Paw members did not receive any interest in land, much of that proposal is similar to Rainbow's plan and the SEC staff concluded that no security was involved.

Another reason for following the condominium rather than recreational membership line of authority, is the whole question of dealing with enhancements added by the lessee. With a membership, the purchaser/holder has only a license to use facilities. He or she is not going to add improvements to that license. With the leaseholds, however, the lessee may construct a building, provide landscaping or otherwise add value to the lot. This is done without the participation of the sponsor or developer and is something the lessee may wish to recoup upon a disposition of the lease. Rainbow's plan would permit that to occur by allowing assignment to another Escapees member for whatever price the lessee is able to obtain. Therefore, the condominium analogy is the more appropriate.

You are doubtlessly aware that many of the recreational membership no-action letters of the SEC seem to place emphasis on the non-transferability of the membership other than back to the sponsor/developer, frequently at the same price paid at the outset. This is understandable in the membership context where the member has had the use of the membership but has not provided his or her own value enhancement. It is, however, another reason why the recreational membership line of authorities should not be applied to the Rainbow project. The condominium cases and no-action letter recognize that the owner or lessee of the real estate interest will want to dispose of that interest at some point and do not view the future possibility of sales or assignments at a higher price as the "profit" motive essential to the finding of an investment contract security.

Rainbow does intend to take back any lease at its original rental cost if a lessee wishes to surrender the lease. This is, however, only a backup alternative to a lessee's direct assignment right. As a practical matter, most, if not all lessees will do their own negotiating if they wish to assign their leases. In order to insure itself that it can release the lots, should it be called upon to reacquire a lease at the original rental price, Rainbow will maintain a list of interested Escapees members. This "waiting" list will also be available to a lessee wishing to assign. I am informed by Rainbow that when it made a preliminary announcement of its intent to sponsor this RV park in Arizona, it received reservation requests for all 325 lots in less than one month and stopped taking names for a standby waiting list when it was at approximately 140. Based upon this respnose and the experience of the existing cooperatively-owned RV parks, Escapees and Rainbow foresee no difficulty in quickly releasing the few lots which are likely to become available in any year. Escapees current active membership exceeds 13,000.

Guarantee Issue.

You also asked whether the agreement by Rainbow to take back leaseholds and pay the original rental cost constitutes a guarantee and, if so, whether such guarantee would be a security. In my analysis, the offer to accept surrender of a lease at a set price is nothing more than a direct promise by Rainbow to reacquire the leasehold for a consideration in the future, at the option of the lessee. No third party is involved. By definition, a "guarantee" is a collateral promise for performance of another's undertaking or a promise to answer for payment of debt or performance of an obligation if the person liable in the first instance fails to make payment or perform the

obligation. Black's Law Dictionary (6th Ed, 1991). The relationship between Rainbow and the lessees is not one of guarantee.

Even if, by some radical interpretation, the agreement to reacquire a leasehold could be construed as a guarantee, such guarantee is not a security unless that which it guarantees is also a security. This is clear from the language of the 1933 Act § 2(1) and the Arizona Securities Act § 44-1801(22) which both define a security to include a "guarantee of, . . . any of the foregoing," the "foregoing" being the litany of instruments and relationships constituting securities. For the reasons stated in my original letter and in the foregoing, we believe that the leaseholds are not securities and therefore the agreement to reacquire a leasehold could not be the guarantee of a security.

Absence of Request to SEC

Finally, you asked if we were requesting an SEC no-action letter on this project. As I indicated on the phone, no such request is contemplated because of the announced SEC position that it will not issue no-action letters on either condominium type projects (The Innisfree Corp. '74-'75 CCH Fed. Sec. Law Rptr. ¶79,935 (1974)) or resort community memberships (Club Maeva Las Hadas, '79-'80 CCA Fed. Sec. Law Rptr. ¶82,329 (1979)).

Obviously, it is our opinion, as stated in the August 7 letter, that the leaseholds will not constitute securities. This would be applicable to our understandings of both federal and Arizona law. If you have any further questions and particularly if you disagree with our opinions, I would appreciate the opportunity of discussing this with your further before the Division issues any formal response.

Very truly yours,

JENNINGS, STROUSS & SALMON

By 
I. Douglas Dunipace

IDD/pap
LT014IDD-D

cc: Rainbow Retreats, Inc.

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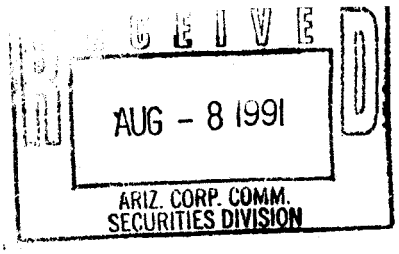
August 7, 1991



Arizona Corporation Commission
Securities Division
1200 West Washington
Phoenix, Arizona 85007

RE: Rainbow Retreats, Inc.

Ladies and Gentlemen:

On behalf of Rainbow Retreats, Inc. ("Rainbow"), we are writing to request that the staff of the Securities Division advise us it would not recommend that the Arizona Corporation Commission (the "Commission") take any enforcement action under the Arizona Securities Act (the "Act") if Rainbow proceeds, as described in this letter, to offer and sell 99-year leaseholds in a proposed recreational vehicle ("RV") park to be situated in Arizona and that the staff concur in our opinion that the leaseholds, as described herein, do not constitute "securities" within the meaning of the Act.

BACKGROUND

Rainbow is a Texas corporation affiliated with Escapees, Inc. ("Escapees"), also a Texas corporation. Escapees is the sponsor of the Escapees Club ("Club") whose members are RV owners who live and travel in RVs either full time or for extended periods. Annual membership in the Club is $40 which entitles the Club member to receive bi-monthly newsletters, participate in RV rallies, attend seminars on RV living, subscribe to a mail and message service (for an added charge), obtain group rate RV insurance, and utilize free overnight parking (without utility hookups), and low-cost campsites (with utility hookups) at Escapee-affiliated RV parks, and free parking of RVs at various locations between travels. At the present time, approximately 12,000 members belong to the Club. The Club is organized into chapters in various geographic locations. To date, the Club has

sponsored eleven cooperatively-owned RV parks which serve as "home base" for members between travels. Each "co-op" is organized as a non-profit corporation owned by the members who buy into it. Three of these co-ops are in Arizona.

RV PARK

Rainbow now proposes to sponsor the creation of a new RV park in Yavapai County, Arizona using a somewhat different format. Rainbow intends to offer, to Club members only, the right to lease lots in the RV park which will contain approximately 111 acres of land. The RV park will consist of four primary elements: 1) 200 lots of approximately 1/4 acre each on which a member could put a mobile home or RV shelter home; 2) 125 smaller lots with space for an RV hookup and possibly a storage building; 3) a campground area with 100 low-cost hookup sites for traveling members; and 4) a clubhouse and other common areas for general member use.

LEASEHOLDS

Rainbow proposes to purchase the land and construct the improvements. It will then enter into 99-year leases with Club members. Each lease will relate to a specific lot. The full 99-year rental (estimated to be $ 8,500 for a large lot and $6,000 for a smaller lot) will be paid up front to Rainbow. It is anticipated that the aggregate front-end rentals will equal the cost of the land and improvements. No fees, commissions or other compensation will be paid to any officers of Rainbow in connection with the creation or operation of the RV Park.

Each leaseholder will be responsible for property taxes, utilities and other services (e.g., trash collection) on his lot and Rainbow will use the income from the campground to pay the park manager and to pay for taxes, utilities, maintenance and services for the campground, common areas and any unleased lots. Rainbow management presently believes that campground income will be adequate to cover all expenses related to the RV park and that no maintenance or operational fees will need to be assessed to Club members who lease the lots. Rainbow will retain the option, however, to levy modest assessments to cover any shortfall in revenues from the campground. If any surpluses are generated from the park, they will be used to make capital improvements.

Rainbow expects that each leaseholder will utilize his lot for a significant part of the year. A leaseholder may surrender the lease to Rainbow at any time and receive an amount

equal to the original rental paid for the lot. Alternatively, the leaseholder may assign the lease to another Club member without restriction on the amount received for the assignment.

Rainbow intends to market the leaseholds as a "home base" for Club members not as an investment. Rainbow will not maintain a rental pool for leaseholders who are not in residence.

DISCUSSION OF LAW

The question of whether a lease agreement could be a security under Arizona law was addressed in Rose v. Dobras, 128 Ariz. 209 (App. 1981). Federal securities laws interpretations are often looked to for guidance by Arizona courts, Greenfield v. Check, 122 Ariz. 70 (App. 1978) and the Arizona Court of Appeals relied heavily on such interpretations in Rose, especially the U.S. Supreme Court case of Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946), in setting forth the test to be applied in Arizona to determine whether an arrangement constitutes an "investment contract" form of security. The necessary elements are:

(1) the investment of money,
(2) in a common enterprise,
(3) with the expectation of earning a profit solely (or primarily) through the efforts of the promoter or other third party.

In both Rose and Howey, the investors acquired interests in an orchard and simultaneously entered into separate agreements with the promoters or their affiliates to manage their portions of the orchards. In each instance, the arrangement was held to be an investment contract security subject to the registration and anti-fraud provisions of the respective securities laws.

The Securities and Exchange Commission has applied the same principles in dealing with condominium units and other interests in realty where the offering of the real estate was coupled with a rental pool or similar arrangement whereby the investor was encouraged to make a profit from rentals to others while the owner was not occupying the condominium. See SEC Release No. 33-5347, April 9, 1973.

On the other hand, when interests in real estate are sold primarily for the purchaser's personal use and not with an inducement of profit through rental pools or similar arrangements, no investment contract is created and the securities laws are inapplicable. See e.g., United Housing

Foundation Inc. v. Forman, 421 U.S. 837 (1975) (shares in a cooperative apartment project); Opinions of the Arizona Attorney General No. 61-54 (shares in a housing cooperative); Grenader v. Spitz, 537 F.2d 612 (2nd Cir., 1986) (privately sponsored cooperative); Dumbarton Condominium Association v. 3120 R. Street Associates Limited Partnership, 657 F.Supp 226 (DCDC 1987) (condominium sales); Mosher v. Southridge Associates, 552 F. Supp. 1226 (W.D.Pa 1982) (condominium sales).

The U. S. Supreme Court decision in Foreman was not changed by the fact that the cooperative owned certain commercial facilities the income of which was used to offset common areas maintenance expenses. The SEC expressed a similar view in Release No. 33-5347 by stating:

> In situations where commercial facilities are a part of the common elements of a residential project, no registration would be required under the investment contract theory where (a) the income from such facilities is used only to offset common area expenses and (b) the operation of such facilities is incidental to the project as a whole and are not established as a primary income source for the individual owners of a condominium or cooperative unit.

APPLICATION OF LAW TO FACTS

The proposed project by Rainbow clearly does not involve the offer or sale of investment contracts for at least five reasons.

1. The lots will be offered for personal use by the leaseholders.

2. There will be no suggestion of an opportunity for leaseholders to make a profit.

3. No rental pool or rental management arrangement will be offered.

4. Revenues from campground rentals will be used to maintain the common areas.

5. No revenues from the campground will be paid to any individual leaseholders.

We, therefore, respectfully request your concurrence in

our opinion that the leaseholds will not constitute securities and your further advice that the staff will not recommend enforcement action if Rainbow proceeds to offer and sell the leaseholds in Arizona.

We have enclosed our check for $200 representing your fee for processing this no action request.

Very truly yours,

JENNINGS, STROUSS & SALMON

I. Douglas Dunipace

IDD:sd
Enclosure
cc: Rainbow Retreats, Inc.
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