

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

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|----------------------|---|--------------------|
| In The Matter Of: |) | |
| |) | |
| MICHAEL DAVID COOPER |) | Administrative |
| |) | Proceeding |
| |) | Numbers: S-05-0132 |
| |) | and S-05-0075 |
| RESPONDENT |) | |

**SUMMARY CEASE AND DESIST ORDER
AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY**

The SECRETARY OF STATE OF MISSISSIPPI, by and through James O. Nelson, II, Assistant Secretary of State for the Business Regulation and Enforcement Division, hereby issues this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty to MICHAEL DAVID COOPER (hereinafter "Cooper"), and in support hereof, states the following.

I. JURISDICTION

The Business Regulation and Enforcement Division of the Office of the Secretary of State (hereinafter "Division"), having the power to administer and to regulate securities under the Mississippi Securities Act, codified at Miss. Code Ann. §§75-71-101, *et. seq.* (hereinafter "Act"), upon due consideration of the subject matter hereof, and having confirmed the offer and sale of investment contracts within the State of Mississippi, has determined the following:

II. FINDINGS OF FACT

Cooper can be served with this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty at Post Office Box 106, Foxworth, Mississippi 39483-0000.

A - YUCATAN

1. Cooper began selling Yucatan investments in 2001.
2. The Yucatan investment scheme involved five (5) companies which together developed resorts and sold twenty-five (25) year timeshare leases in conjunction with management contracts. The companies involved were:
 - a. Yucatan Resorts, Inc. (hereinafter "Yucatan"), formerly an Indiana company, orchestrated a purported timeshare program out of Cancun, Mexico, and other Central American locales;
 - b. Yucatan Resorts, S.A. (hereinafter "Yucatan SA"), formerly a Panamanian corporation, is a counterpart to Yucatan which contracts with sales agents and assists in operating the Yucatan timeshare program;
 - c. Resort Holdings International, Inc. (hereinafter "RHI"), formerly a Nevada corporation, is an affiliate of Yucatan and Yucatan SA and is the distributor of the Yucatan timeshare program in North America. RHI provides promotional services and is responsible for recruiting agents to sell the timeshares;
 - d. Resort Holdings International, S.A. (hereinafter "RHI-SA"), formerly a Panamanian corporation, is a counterpart to RHI. RHI-SA coordinates with RHI to provide promotional assistance and to perform various administrative functions in connection with the Yucatan timeshare program;

- e. World Phantasy Tours, Inc. a/k/a Majesty Travel and Viajes Majesty (hereinafter "World"), a purported resort management and travel agency operating as the designated servicing agent for the Yucatan timeshare program; and
- f. Avalon Resorts (hereinafter "Avalon") is a resort development company associated with Yucatan, Yucatan SA, RHI, RHI-SA, and World.

The companies identified in a. through f. above are hereinafter referred to collectively as the "Yucatan Companies."

The Division has no knowledge that any of these businesses are still in operation and, if they are, it has no knowledge of the current addresses for any of these companies.

3. These companies were owned and/or controlled by Michael E. Kelly, and wife, Lori Kelly (collectively hereinafter "Kelly"). Kelly had direct oversight and/or control of the timeshare program, the sale of the leases, the sale of the management contracts, and the expenditure of investor funds.

4. Kelly and the Yucatan Companies offered investors the opportunity to invest in "Universal Leases." Investors were offered three (3) lease options. In reality, options 1 and 2 were unworkable, illusory choices, leaving option 3 as the sole alternative. All of Cooper's Mississippi investors in the "Universal Lease Program" selected option 3.

a. Option 1 purportedly allowed investors to use the timeshare unit themselves. Each purchaser/investor was assigned a specific unit for a specific week at a specific location. The investor had **no** input into the date, quality or location of the timeshare assignment. In addition to pre-paying the lease fee, RHI charged the investors an annual management fee.

b. Option 2 ostensibly allowed investors themselves to rent out their assigned timeshare unit.

c. Option 3 received the most attention in the promotional materials. According to the promotional brochures, investors who select option three (3) would be eligible to receive a **guaranteed annual return** on their timeshare investment every year for a period of twenty-five (25) years, after which time the lease would be renewable for another twenty (20) years for the price of One Dollar (\$1.00).

The earlier Mississippi investors were guaranteed a return of eleven percent (11%) on the pre-paid lease fee. Later investors were guaranteed a return of nine percent (9%). Kelly and the Yucatan Companies sold the management contract with World in conjunction with the sale of the timeshare lease. Although the Universal Lease application does not mandate the selection of World as the investors' servicing agent, **the selection of World is the only means listed under which investors can earn the promised rate of return on their Universal Lease investments.**

5. The investors had no functions or responsibilities for the life of the lease following their initial investment of the pre-paid lease fee. The offer and sale of leases of condominium units coupled with an offer of or an agreement to perform rental or other services for the purchasers is an investment contract. The Division has two (2) bases for alleging that the purchase of a lease coupled with a service or management contract is an investment contract.

a. The purchase of a lease, together with a service or management contract, forms an "investment contract." In essentially one (1) transaction, the purchasers

invested their money in a common enterprise with the profits to come solely from the efforts of others. In addition, the investment contracts guaranteed a certain rate of return and included a take-back provision.

b. The purchase or lease, together with a service or management agreement, was part of an overall scheme to "pool" the funds of a number of individuals in a common venture managed by persons other than the purchasers or investors, and, thus, constitutes an investment contract. The common venture was the purchase and development of additional resort locations. In addition, investors were told that the property was debt free, fully insured against loss, and that they (the investors) had a first lien on this property.

6. Since 2001, Cooper directly engaged in the offer and sale of securities to Mississippi residents in the form of investment contracts as defined by the Act.

7. The Yucatan Companies reneged on paying the guaranteed interest to the investors.

8. When the investors attempted to exercise the "take back" provision in the contracts, the Yucatan Companies refused to honor the provision.

9. While Cooper was acting as a broker-dealer selling the investments, he was not registered with the Division.

10. Yucatan Resorts, Inc., Yucatan Resorts S.A., Resort Holdings International, Inc., Resort Holdings International S.A., and World Phantasy Tours, Inc., the affiliated companies selling the investment contracts have never registered with the Division.

B. SUNSHINE

11. The Sunshine Real Estate Development scheme involved the following companies and individuals.

a. Sunshine Real Estate Development, Inc. (hereinafter "Sunshine"), a Nevada based corporation, ostensibly purchased and developed real estate. The company's literature includes the following information:

"Developers receive their capital from the private investment community. The company works exclusively with qualified, sophisticated investors who are knowledgeable and experienced in various real estate ventures.

The company offers each general partner a high annual interest return, that is fully secured, and participation in the profitable sale of each project . . ."

b. To avoid having to register these investment contracts as securities, Sunshine attempted to structure the investments as real estate joint ventures and by assigning each general partner a specific interest in a specific lot(s) covered under the joint venture agreement.

c. The joint venture agreements are in reality investment contracts in that the Mississippi investors had no functions or responsibilities following their initial investment. Sunshine's responsibilities were to acquire the real estate, make it available for investment, obtain the necessary permits, pay all fees and expenses, and manage the project. In return, Sunshine promised the investors that they would receive "*. . . cash back plus an amount equal to a minimum of 12% profit per annum on all monies contributed.*"

The Mississippi investors invested their money in a common enterprise with the profits to come solely from the efforts of others. In addition, the investment contracts guaranteed a certain rate of return. The result was a "pooling" of funds of a number of individuals in a common venture managed by persons other than the investors, and, thus, constitutes an investment contract. A copy of a Joint Venture Agreement sold to an investor by Cooper is attached as Exhibit "A".

12. Sunshine was not registered as an issuer or exempt from registration with the Mississippi Secretary of State's Office.

13. Cooper acted as a salesperson and/or agent on behalf of Sunshine while unregistered.

III. APPLICABLE LAW

14. Miss. Code Ann. § 75-71-105(b) provides in pertinent part:

"Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. . .

15. An issuer is defined in Miss. Code Ann. § 75-71-105(i) as ". . . any person who issues or proposes to issue any security, . . ."

16. Miss. Code Ann. § 75-71-105(n) defines a security as follows:

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; **investment contract**; . . .

17. The Mississippi Secretary of State, pursuant to the rulemaking authority provided in Miss. Code Ann. §75-71-107(e), has defined an investment contract in Mississippi Securities Act Rule 103(H) as follows:

Investment Contract shall mean and include any interest or participation in a contract, transaction, scheme, common enterprise, or profit-seeking venture whereby a person invests therein and looks primarily to the promoter or a third party for the financial success of such venture.

18. The Mississippi Securities Act requires those selling securities to register with the Division. Miss. Code Ann. §75-71-301 provides as follows:

Except as provided for in Section 75-71-109(a), **it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.**

Except as provided for in Section 75-71-109(a), it is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Secretary of State.

19. The Mississippi Securities Act at Miss. Code Ann. §75-71-401 provides for registration of securities sold in Mississippi. In pertinent part, it provides as follows:

Except as provided for in Section 75-71-109(a), it is unlawful for any person to offer or sell any security in the State of Mississippi unless: (1) it is registered under this chapter or Section 37-155-115; (2) the security or transaction is exempted under Article 3 of this chapter, or (3) it is a federal covered security.

20. The penalties for violation of the Act are provided in Miss. Code Ann. § 75-71-735 which provides as follows:

Any person who wilfully violates any provision of this chapter, except Section 75-71-115, or who wilfully violates any rule or order under this chapter, or who wilfully violates Section 75-71-115 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than twenty-five thousand dollars (\$25,000.00) or imprisoned not more than five (5) years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge

of the rule or order. No indictment or information may be returned under this chapter more than five (5) years after the alleged violation.

IV. CONCLUSIONS OF LAW

The previous paragraphs are incorporated herein by reference.

21. Since early 2001, Respondent has offered and sold securities in the form of investment contracts, within or from Mississippi to Mississippi residents.
22. The Secretary of State has jurisdiction over this matter pursuant to Miss. Code Ann. §75-71-105(a) of the Mississippi Securities Act.
23. Respondent was not registered with the Division as a broker-dealer in violation of Miss. Code Ann. § 75-71-301.
24. Respondent sold unregistered securities in violation of Miss. Code Ann. § 75-71-401.

V. AMENDMENTS

The Division reserves the right to amend this Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty to allege additional violations.

VI. PUBLIC NOTICE

This Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty is issued in the public interest and for the protection of investors consistent with the purpose of the Act.

VII. RIGHT TO AN ADMINISTRATIVE HEARING

An administrative hearing may be requested in this matter. Any such request shall be made in writing within thirty (30) days from the date of receipt of this Order. The request must be addressed to James O. Nelson, II, Assistant Secretary of State, Post

Office Box 136, 700 North Street, Jackson, Mississippi 39205-0136.

If an administrative hearing is requested, written notice of the date, time and place will be given to all parties by certified mail, return receipt requested. Said notice will also designate a Hearing Officer.

In the event such a hearing is requested, the Respondent may appear, with or without the assistance of an attorney, at the date, time and place specified and cross-examine witnesses, present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on the Respondent's behalf at the hearing relating to the matters contained herein. In the event such written notice is not received within said thirty (30) day period of time, a FINAL CEASE AND DESIST ORDER AND ORDER IMPOSING ADMINISTRATIVE PENALTY may be entered in this proceeding with no further notice.

VIII. NOTICE OF INTENDED ACTION

Please note that the Secretary of State intends to take the following additional action:

A. Impose an administrative penalty of up to \$25,000.00 on Respondent for each violation of the Act.

B. The imposition of an administrative penalty shall become effective thirty (30) days after receipt of this Notice unless a written request for an administrative hearing is received by the Secretary of State before the expiration of said thirty (30) days.

IX. ORDER

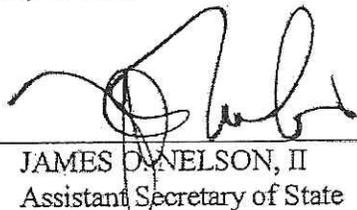
IT IS THEREFORE ORDERED, pursuant to the authority set out in the Act that Respondent, MICHAEL DAVID COOPER shall immediately CEASE AND DESIST FROM FURTHER ILLEGAL ACTIVITY.

BE ADVISED THAT, a willful violation of this Summary Cease and Desist Order may be punishable upon conviction by a fine of not more than Twenty-five Thousand Dollars (\$25,000) or five (5) years imprisonment, or both, in addition to civil and administrative remedies available to the Division.

SO ORDERED, this, the 08th day of August, 2006.

ERIC CLARK
Secretary of State

BY:



JAMES O'NEILSON, II
Assistant Secretary of State
Business Regulation and Enforcement

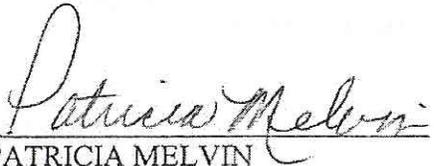
Patricia Melvin, MSB #2865
Mississippi Secretary of State's Office
700 North Street
Post Office Box 136
Jackson, Mississippi 39205-0136
Tel. (601) 359-1650
Fax. (601) 359-1499

CERTIFICATE OF SERVICE

I, Patricia Melvin, do here by certify that I have this day mailed via Certified Mail, postage pre-paid, a true and correct copy of the Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty to the following:

MICHAEL DAVID COOPER
POST OFFICE BOX 106
FOXWORTH, MISSISSIPPI 39483-0000

This, the 31st day of August, 2006.


PATRICIA MELVIN
Senior Attorney
Business Regulation and Enforcement

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