

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

MICHAEL E. KELLY; MICHAEL P. KELLY;)
DONALD L. KELLY; JOHN L. CORWIN;)
CORPORATIVO NOLA, S.A. DE C.V.; RESORT)
HOLDING INTERNATIONAL (RHI) S.A.;)
PANORAMA COMMUNITIES, S.A.; WORLD)
PHANTASY TOURS, INC. (VIAJES Y FANTASIA)
POR EL MUNDO, S.A.), ALSO D/B/A MAJESTY)
TRAVEL; GALAXY PROPERTIES MANAGEMENT,)
S.A.; YUCATAN RESORTS, S.A. DE C.V.; RESORT)
HOLDINGS INTERNATIONAL, S.A. de C.V.; MARK)
RUTTENBERG; RUTTENBERG & ASSOCIATES)
FINANCIAL MARKETING, INC.; MARK G.)
MEYER; MARK MEYER & ASSOCIATES, INC.;)
RICHARD E. RINER; SOUTHWEST INCOME)
MARKETING, INC.; GEORGE PHELPS, ALSO)
D/B/A SAFE ESTATE PLANS; JOHN E. TENCZA,)
ALSO D/B/A AMERICAN INVESTMENT)
MANAGEMENT GROUP, INC.; AMERICAN ELDER)
GROUP, L.L.C.; CARL Q. LEE; CARL LEE AND)
ASSOCIATES, INC.; ROY D. HIGGS; WARREN T.)
CHAMBERS; WILLIAM K. BOSTON, JR.;)
CENTURY ESTATE PLANNING, INC.,)

Defendants,)

and)

AVANTI MOTOR CORPORATION and DMK)
PROPERTIES, L.L.C.,)

Relief Defendants)

07C 4979
JUDGE BUCKLO
MAGISTRATE JUDGE KEYS
COMPLAINT

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“Commission” or “SEC”), alleges as follows:

NATURE OF THE ACTION

1. From 1999 until 2005, Michael E. Kelly (“Kelly”) and others working with him perpetrated a massive fraud that victimized thousands of investors across the United States, raising at least \$428 million through the offer and sale of fraudulent and unregistered securities. These securities, called “Universal Leases,” were structured as timeshares in several hotels in Cancun, Mexico, coupled with pre-arranged servicing agreements with a purportedly independent leasing agent (the “Leasing Agent”) that promised investors a safe investment and guaranteed returns. As explained to investors, the Leasing Agent would rent their timeshares to others, pay investors a high, fixed rate of return, and when investors wanted out of the program, the Leasing Agent would buy back their timeshares from them for the full amount of their original investment.

2. Contrary to the representations made to Universal Lease investors, however, the rental arrangement with the Leasing Agent was a sham. Instead, for most of the scheme, Kelly and those under his control simply used new investor funds raised in the scheme to make illusory “rental income” payments to Universal Lease investors.

3. Using a network of insurance brokers who were not registered with the Commission and could not legally sell these securities (the “Selling Brokers”), Kelly targeted older Americans and their retirement savings, with more than \$136 million of the invested funds coming from IRA and other retirement accounts, and tens of millions more coming from

annuities and mutual fund money. Kelly paid these Selling Brokers huge commissions, undisclosed to investors, totaling more than \$72 million.

4. Kelly's Universal Lease scheme has now collapsed, and investor losses exceed \$310 million. Thousands of the defrauded investors are senior citizens, many of whom have lost most or all of their retirement savings.

5. As set out more fully herein, Kelly, a former Indiana resident, took a number of sophisticated and extraordinary steps to shield his scheme from interference by United States law enforcement authorities. For example, at the beginning of his scheme, Kelly moved himself and the others running the scheme to Mexico where, for the most part, they have remained. Kelly also used a number of Panamanian and Mexican corporations¹ to operate his scheme and transferred tens of millions of dollars of investor funds through these entities' foreign bank accounts, making it difficult for U.S. regulators to track all of the uses of investor funds and all of the sources of investor payments.

6. Kelly also failed to register these securities with the Commission as required under the federal securities laws, thereby denying investors the protections afforded to them by the detailed financial and other disclosures required by these laws.

7. Over time, a number of state regulatory agencies ordered Kelly and the entities through which he sold the Universal Leases to stop selling these unregistered securities. Struggling to keep the scheme alive with sufficient new investor funds due to pressure from state regulators, Kelly attempted to keep the scheme afloat by altering it in a variety of ways. For example, in early 2004, Kelly purportedly stopped selling the original Universal Lease in the

¹ Due to Kelly's use of entities with similar names based in three countries, this complaint uses a convention of adding a country-of-origin label after each entity's abbreviated name. Accordingly, United States based entities end with "US," Panamanian entities end with "Pan," and Mexican entities end with "Mex."

U.S., but instead, began selling a nearly identical product under the name “Residence Club Membership.” In mid-2004, the Universal Lease program changed Leasing Agents and unilaterally cut the return paid to investors. By mid-2005, the new Leasing Agent’s payments to investors had essentially ceased.

8. Kelly controlled all aspects of the scheme and used his two sons, Defendants Donald L. Kelly (“DL Kelly”) and Michael P. Kelly (“MP Kelly”) to assist him. Defendant John L. Corwin (“Corwin”), a former car salesman who had worked with Kelly in Indiana, also helped Kelly run the Universal Lease program.

9. Kelly issued and sold these investments through Mexican and Panamanian companies he owned and controlled during the scheme, including Yucatan Resorts, S.A. (“Yucatan Resorts Pan”), and Defendants Resort Holding International (RHI), S.A. (“RHI Pan”), Corporativo Nola, S.A. de C.V. (“Corporativo Mex”) and Panorama Communities, S.A. (“Panorama Pan”) (collectively, the “Issuers”). Kelly controlled all of these entities throughout their involvement in the scheme.

10. From late 1999 to mid-2004, Kelly used Defendant World Phantasy Tours, Inc. (Viajes Fantasia Por El Mundo S.A.), which also did business as Majesty Travel (“Majesty Pan”), as the purportedly large, independent leasing agent. In fact, Majesty Pan was a small, Panamanian travel agency controlled by Kelly. In mid-2004, Defendant Galaxy Properties Management S.A. (“Galaxy Pan”) purportedly purchased Majesty Pan and took over as the Leasing Agent. Kelly controlled this entity too.

11. Kelly used literally hundreds of Selling Brokers to market and sell the Universal Leases in the U.S. This complaint names as Defendants a number of the Selling Brokers who pocketed more than \$1 million in undisclosed commissions (“the Top Selling Brokers”). These

include Mark Ruttenberg (“Ruttenberg”) and his firm Ruttenberg & Associates Financial Marketing, Inc. (“Ruttenberg and Associates US”); Mark Meyer (“Meyer”) and his firm Mark Meyer & Associates, Inc. (“Meyer and Associates US”); Richard E. Riner (“Riner”) and his firm Southwest Income Marketing, Inc. (“Southwest Income US”); George L. Phelps, also doing business as Safe Estate Plans (“Phelps”); John E. Tencza (“Tencza,” also doing business as American Investment Management Group, Inc.), and his firm American Elder Group, L.L.C. (“American Elder US”); Carl Q. Lee (“Lee”) and his firm Carl Lee and Associates, Inc. (“Lee and Associates U.S.”); Roy D. Higgs (“Higgs”); and Warren T. Chambers (“Chambers”) and William K. Boston, Jr., (“Boston”), both working through their firm Century Estate Planning, Inc. (“Century Estate US”).

12. Each of the Top Selling Brokers recruited a number of new Selling Brokers to offer and sell Universal Leases (“down-line brokers”), and Kelly paid the Top Selling Brokers “override commissions” on their down-line brokers’ sales. The total commission paid to all tiers of brokers was typically 18% of the Universal Lease purchase price, and Kelly promised a second commission equal to one-half of the original commission (another 9% of the Universal Lease purchase price), if the brokers kept investors in the program for two (later three) years. Kelly paid each of the Top Selling Brokers more than \$1 million in Universal Lease commissions. None of the Top Selling Brokers was associated with a broker or dealer registered with the Commission during the offering.

13. Kelly used Defendant Resort Holdings International, S.A. de C.V. (“RHI Mex”) and Resort Holdings International, Inc. (“RHI U.S.”) to conduct Universal Lease operations in the United States, and used Yucatan Resorts Pan and Defendant Yucatan Resorts, S.A. de C.V. (“Yucatan Resorts Mex”) to hire the Selling Brokers.

14. By virtue of their conduct as alleged herein, Kelly and the other Defendants have engaged in transactions, acts, practices, and courses of business that constitute violations of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), e(c), and q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rules 10b-5 [17 C.F.R. § 240.10b-5] and 10b-10 [17 C.F.R. § 240.10b-10] promulgated thereunder; and Section 15(a) of the Exchange Act [15 U.S.C. § 77o(a)], and, unless permanently enjoined, Defendants are likely to engage in future violations of these provisions.²

15. The Commission brings this civil enforcement action for a judgment: (a) permanently enjoining Kelly and the other Defendants from future violations of the antifraud and registration provisions of the federal securities laws; (b) requiring Defendants and Relief Defendants to disgorge their ill-gotten gains, along with prejudgment interest; (c) imposing civil penalties against Kelly and the other Defendants for their unlawful conduct; (d) appointing a Receiver to marshal the assets of Defendants and return funds to injured investors; and (e) such other relief as the Court deems appropriate.

JURISDICTION

16. The Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

THE DEFENDANTS

Persons Running the Scheme

17. **Michael E. Kelly** (Kelly), age 57, is a former resident of North Liberty, Indiana who, until recently, resided in Cancun, Mexico. Kelly is currently incarcerated in the

² The specific defendants against whom each injunction is sought, and the specific counts alleged against each defendant are set forth in Counts I through X herein.

Metropolitan Correctional Center in Chicago, Illinois where he is being held, pre-trial, on a criminal fraud complaint filed in the case of U.S.A v. Michael E. Kelly, Case No. 06-CR-964 in the United States District Court for the Northern District of Illinois. During the relevant period, Kelly created and controlled the Universal Lease program. Kelly controlled the companies that operated as the Issuers of the Universal Leases to U.S. investors (Yucatan Resorts Pan, Corporativo Mex, RHI Pan, and Panorama Pan), the Leasing Agents (Majesty Pan and Galaxy Pan), and the companies contracting with others (such as the Selling Brokers) to sell the Universal Lease in the U.S. (Yucatan Mex and RHI Mex). Kelly personally trained the Selling Brokers and, on at least one occasion, personally offered the Universal Lease to investors in the United States.

18. **Michael P. Kelly** (MP Kelly), age 29, is a former resident of North Liberty, Indiana now living in Cancun, Mexico. MP Kelly is one of Kelly's two sons. MP Kelly is a U.S. citizen. Among other things, MP Kelly signed Universal Lease contracts with investors on behalf of both the Issuers and the Leasing Agents. MP Kelly was in charge of Kelly's Cancun Universal Lease office during the time Universal Leases were sold as "Residence Club Memberships."

19. **Donald L. Kelly** (DL Kelly), age 29, is a former resident of North Liberty, Indiana now living in Cancun, Mexico. DL Kelly is one of Kelly's two sons. DL Kelly is a U.S. citizen. Among other things, DL Kelly transferred investor funds among accounts controlled by Kelly in order to make it appear that the periodic income payments to investors were coming from the purportedly independent Leasing Agent. DL Kelly also supervised the employees conducting the Leasing Agent's business.

20. **John L. Corwin** (Corwin), age 57, is a former resident of Mishawaka, Indiana,

now living in Cancun, Mexico. Corwin is a U.S. citizen. During the Universal Lease offering, Corwin, among other things, ran Kelly's Cancun Universal Lease office. Corwin was not involved in the Universal Leases sold as Residence Club Memberships.

Issuers and Leasing Agents

21. **Resort Holding International, (RHI) S.A.** (RHI Pan) is a Panamanian corporation that during the scheme was owned and controlled by Kelly. RHI Pan offered and sold Universal Leases to investors in the United States through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$80 million of Universal Lease investor funds to be transferred to RHI Pan's Panamanian bank accounts.
22. **Corporativo Nola, S.A. de C.V.** (Corporativo Mex) is a Mexican corporation that during the scheme was controlled and partly owned by Kelly. Corporativo Mex offered and sold Universal Leases to investors in the United States through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$61 million of Universal Lease investor funds to be transferred to Corporativo Mex's bank accounts in Mexico. Kelly, MP Kelly, and Kelly's daughter Lori, a non-defendant herein, were signatories on Corporativo Mex's bank accounts.
23. **Panorama Communities, S.A.** (Panorama Pan) is a Panamanian corporation that during the scheme was owned and controlled by Kelly and DL Kelly. During 2004 and early 2005, Panorama Pan offered and sold Universal Leases in the form of "Residence Club Memberships" to U.S. investors through the Selling Brokers. During the scheme, Kelly and others under his control caused more than \$8 million of U.S. investor funds to be transferred to Panorama Pan's Mexican and Panamanian bank accounts.

24. **World Phantasy Tours, Inc. (Viajes Fantasia Por El Mundo S.A.), also d/b/a Majesty Travel** (Majesty Pan) is a Panamanian corporation. From late 1999 to June 2004, Majesty Pan was the purportedly independent, third party management company (“Leasing Agent”) associated with Kelly’s Universal Lease offering. During this time, Kelly controlled Majesty Pan and funded its purported rental income payments to investors.

25. **Galaxy Properties Management, S.A.** (Galaxy Pan) is a Panamanian corporation that in June 2004 took over as the purportedly independent management company associated with the Universal Leases. Galaxy Pan was also the Leasing Agent used for the Universal Leases sold as Residence Club Memberships. Kelly, MP Kelly and DL Kelly controlled Galaxy Pan and funded its purported rental income payments to investors.

26. **Yucatan Resorts, S.A. de C.V.** (Yucatan Resorts Mex) is a Mexican corporation that during the scheme was owned and controlled by Kelly, MP Kelly and DL Kelly. Yucatan Resorts Mex contracted with many Selling Brokers for them to offer and sell the Universal Lease in the United States. During the scheme, Kelly and others under his control caused more than \$2.4 million of investor funds to be transferred to Yucatan Resorts Mex’s Mexican bank accounts, which Kelly controlled.

27. **Resort Holdings International, S.A. de C.V.** (RHI Mex) is a Mexican corporation that during the scheme was controlled by Kelly and MP Kelly. RHI Mex was purportedly a marketing company for Corporativo Mex, and it contracted with Kelly’s U.S. affiliate, RHI US, for it to offer Universal Leases to investors in the United States. During the scheme, Kelly and others under his control caused more than \$1 million of investor funds to be transferred to RHI Mex’s Mexican bank accounts.

Unregistered Broker Defendants

28. **Mark Ruttenberg** (Ruttenberg) and **Ruttenberg & Associates Financial Marketing, Inc.** (Ruttenberg and Associates US). Ruttenberg, age 60, is a resident of Bloomington, Illinois. Before working for Kelly's Universal Lease program, Ruttenberg worked for several broker-dealers that were registered with the Commission and passed the NASD's Series 1 and Series 63 examinations. During the relevant period, Ruttenberg owned and controlled Ruttenberg and Associates US, an Illinois corporation with its principal place of business in Bloomington, Illinois. Ruttenberg and Associates US contracted with Yucatan Resorts Mex to market the Universal Lease in the United States and to recruit Selling Brokers to offer and sell the Universal Lease in the United States. From late 1999 to March 2004, Ruttenberg and Ruttenberg and Associates US recruited hundreds of Selling Brokers who offered and sold Universal Leases to investors in the United States.

29. Kelly and others under his control paid Ruttenberg and Associates US more than \$6.4 million in commissions for the Universal Leases sold by their down-line brokers.

30. At all times during the period in which they sold Universal Leases, neither Ruttenberg nor Ruttenberg and Associates US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

31. **Mark G. Meyer** (Meyer) and **Mark Meyer & Associates, Inc.** (Mark Meyer and Associates US). Meyer, age 54, is a resident of Coppell, Texas. Before working for Kelly's Universal Lease program, Meyer worked for several broker-dealers registered with the Commission and passed the NASD's Series 6 and Series 63 examinations. Meyer incorporated Mark Meyer and Associates US, a Texas corporation with its principal place of business in Coppell, Texas, and conducted his insurance and Universal Lease business through it. Meyer

offered and sold Universal leases, and recruited others to do so.

32. Kelly and others under his control paid Meyer and Meyer and Associates US more than \$1.1 million in commissions for Meyer's Universal Lease sales and those of his down-line brokers.

33. At all times during the period in which they sold Universal Leases, neither Meyer nor Mark Meyer and Associates US was registered with the Commission as a broker and neither was a dealer or associated with any registered broker or dealer.

34. **Richard E. Riner** (Riner) and **Southwest Income Marketing, Inc.** (Southwest Income US). Riner, age 55, is a resident of San Marcos, Texas. Riner is President of Defendant Southwest Income US, a Texas corporation with its principal place of business in San Marcos, Texas. During the relevant period, Riner conducted his insurance and Universal Lease business through Southwest Income US. Riner offered and sold Universal Leases and recruited others to do so.

35. Kelly and others under his control paid Riner and Southwest Income US more than \$3.6 million in commissions for their Universal Lease sales and those of their down-line brokers.

36. At all times during the period in which they sold Universal Leases, neither Riner nor Southwest Income US was registered with the Commission as a broker or dealer and neither was associated with any registered broker or dealer.

37. **George L. Phelps** (Phelps). Phelps, age 53, is a resident of San Antonio, Texas. Phelps conducted business individually and under the name "Safe Estate Plans." Phelps offered and sold Universal Leases and recruited others to do so.

38. Kelly and others under his control paid Phelps more than \$1.8 million in

