

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

BOYD KELLY NIELSEN,

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-08-0051

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Boyd Kelly Nielsen, hereby stipulate and agree as follows:

1. Boyd Kelly Nielsen (Nielsen) was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. In connection with that investigation, the Division issued an Order to Show Cause against them on April 22, 2008, alleging securities fraud and sale of an unregistered security. A hearing was set for September 22, 2011 to resolve the action.
3. The Division has now concluded its investigation, and the parties have agreed to completely

resolve this matter by way of a stipulation and consent order.

4. Nielsen waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
5. Nielsen acknowledges that this agreement does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Nielsen admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

7. Boyd Kelly Nielsen (Nielsen) was, at all times relevant to the matters asserted herein, a resident of Utah.

GENERAL ALLEGATIONS

8. Nielsen collected at least \$201,390.80 in investor funds for Resort Holding International Inc.'s Universal Lease program, from at least four Utah investors. Two of the investors received a few interest payments, and two received nothing.
9. Resort Holding International Inc. (Resort Holding) was a Nevada corporation in July 1999, but its corporate status was dissolved in December 2004. Resort Holding has never been registered as a business entity in Utah.
10. In December 2006, the president of Resort Holding, Michael Eugene Kelly, was arrested in Florida, among other things, on charges that he devised and intended to devise a scheme and

artifice to defraud and obtain money by making material misrepresentations and omissions. Kelly has since been held in custody in Chicago, Illinois, awaiting a federal indictment by the United States Department of Justice. The arrest and anticipated indictment stem from the offer and sale of the Universal Lease, by Resort Holding and its many agents, to hundreds of investors across the nation.

11. The Resort Holding Universal Lease is an investment contract and, therefore, a security under § 61-1-13 of the Act.

INVESTORS DJ AND JR

12. In early spring 2003, Nielsen met with DJ and JR, and told them the following about an investment in Resort Holding's Universal Lease program:
 - a. The investment would pay 9% per year, and matured in 25 years;
 - b. Investors could let the investment accrue or receive monthly checks;
 - c. Resort Holding would buy back your investment after three years if they wanted out;
 - d. There were other investors;
 - e. Investors could use the condo;
 - f. Nielsen would make a commission;
 - g. Cancun was the number one tourist attraction in Mexico, and DJ and JR would never have to worry about the condos not renting;
 - h. The condos were booked years in advance;

- i. The minimum investment was \$5,000; and
 - j. Nielsen had visited the resort, and it was nice and well managed.
 - k. Nielsen gave DJ and JR a Universal Lease Agreement to review, and explained it to them.
13. Nielsen showed DJ and JR a clipping from Dunn & Bradstreet that gave Resort Holding high marks.
14. Nielsen showed DJ and JR color brochures for Resort Holding hotels in Mexico, and showed the hotel they would be investing in to them.
15. The meeting took place at Nielsen's office in Utah County, and lasted about an hour. In addition to DJ, JR and Nielsen, Jeff Bird, one of Nielsen's co-workers, was also present at the meeting. Nielsen did the majority of the talking at this meeting.
16. Approximately one week after the initial meeting, DJ and JR met Nielsen again at his office in Utah County. Jeff Bird and another person were also present.
17. This meeting lasted approximately one hour. Once again, Nielsen did most of the talking. He provided much of the same information to DJ and JR as before.
18. DJ and JR each met with Nielsen a third time to complete the investment, but they met with Nielsen separately and on different days.
19. Prior to accepting DJ's or JR's investment funds, Nielsen failed to tell them about the administrative actions against Resort Holding, Michael Eugene Kelly, and/or a company

controlled by Kelly, filed by the Wisconsin Division of Securities, and the Arizona Securities Division, in April and May 2003, respectively.

20. On September 11, 2003, JR met with Nielsen at his office in Utah County, and executed the Universal Lease Agreement and the Universal Lease Application. JR agreed to pay for the investment by rolling over \$37,085.67 from an IRA held at Zions Bank to an IRA with Trust Company of America, but the investment funds were not transferred to until about October 16, 2003 even though he had signed the documents at that meeting.¹
21. JR executed a Universal Lease Agreement, naming him as the “Leaseholder” and Resort Holding International, S.A. as the “Lessor.” The lease term under the Universal Lease Agreement is for 25 years, the purchase amount is \$37,085.67, and includes sections regarding operations and maintenance fees, common areas, insurance, and default fees.
22. JR also signed the Universal Lease Application, a two-page document with JR’s contact and beneficiary information. Nielsen signed as the witness on the Universal Lease Application and provided his sales representative identification number.
23. On September 15, 2003, DJ met with Nielsen at his office in Utah County. At this meeting, DJ invested \$80,000 in the Resort Holding Universal Lease by giving Nielsen a cashier’s check for \$80,000, made payable to Trust Company of America.
24. DJ executed a Universal Lease Agreement, naming himself as the “Leaseholder” and Resort Holding International, S.A. as the “Lessor.” The Universal Lease Agreement states that the

term of the lease is 25 years, the purchase amount is \$80,000, and includes sections regarding operations and maintenance fees, common areas, insurance, and default fees.

25. DJ also executed a Management Agreement, naming DJ as the “Client” and Majesty Travel² as the “Administrator.” The Management Agreement states that Majesty Travel will rent, manage, administer, and collect rental income on behalf of the Client, and guarantees rental of the unit. The Agreement also states that DJ will receive compensation of 4% annually as rental compensation, and an additional 5% annually for the option to purchase DJ’s unit (for a total of 9% annually), which will be paid in monthly payments.
26. DJ also signed the Universal Lease Application, a two-page document with DJ’s contact and beneficiary information. Nielsen signed as the witness on the Universal Lease Application and provided his sales representative identification number.
27. After investing, both DJ and JR started receiving monthly interest payments. Sometimes the interest payments came from Majesty Travel, sometimes from Galaxy Properties Management S.A., and sometimes from Trust Company of the Pacific.
28. Starting in June or July 2005, DJ’s and JR’s interest payments started to show up late or not at all.
29. DJ and JR immediately contacted Nielsen about the late and missing payments.
30. Nielsen told DJ and JR that he had called Michael Eugene Kelly and the Trust Company of America to get some information, but got nowhere.

31. Nielsen assured DJ and JR that they would get their money back.
32. Nielsen continued to update DJ and JR about the status of legal action taken by investors against Resort Holding and Kelly.
33. DJ has received a total of \$8,666.67 from his investment in Resort Holding's Universal Lease. DJ is still owed \$80,000 in principal alone.
34. JR has received a total of \$1,835.86 from his investment in Resort Holding's Universal Lease, and is still owed \$37,085.67 in principal alone.

INVESTORS CJ AND LJ, (HUSBAND AND WIFE)

35. In 2003, Nielsen met with CJ and LJ at his office in Utah County to discuss investment options for their retirement funds. CJ and LJ had first met Nielsen in the fall of 2002 at a seminar in Utah County sponsored by United Securities Alliance.
36. In the 2003 meeting, Nielsen told CJ and LJ the following about the investment opportunity in a Resort Holding Universal Lease:
 - a. CJ and LJ would receive 9% annual interest in quarterly payments;
 - b. Nielsen himself had invested;
 - c. The money would be used to maintain and expand resorts in Mexico;
 - d. Resort Holding had plans to dredge a harbor in Mexico to build a lagoon;
 - e. There were thousands of other investors; and
 - f. There was insurance against natural disasters.

37. Prior to accepting CJ's and LJ's investment funds, Nielsen failed to tell them about the administrative actions against Resort Holding, Michael Eugene Kelly, and/or a company controlled by Kelly, filed by the Wisconsin Division of Securities and the Arizona Securities Division, in April and May 2003, respectively.
38. CJ and LJ decided to invest using money from an existing annuity.
39. CJ and LJ signed no Universal Lease agreements in conjunction with their investment, but simply agreed to the deal by a handshake at that time.
40. Nielsen later helped CJ and LJ complete all the necessary documents to affect the surrender of their annuity, and the transfer of funds to an IRA custodian.
41. On or about October 14, 2003, CJ and LJ received a letter from American Equity Investment Life Insurance Company, stating that their annuity (\$31,428.07) would be transferred to the Trust Company of America pursuant to their request.
42. On May 5, 2004, CJ executed a form authorizing the transfer of their \$31,428.07 from Trust Company of America to the Trust Company of the Pacific.
43. At the end of 2004, and in subsequent mailings from the Trust Company of the Pacific, the company recognized the receipt of \$28,577.69 (after fees) of rollover IRA contributions from CJ and LJ. The Trust Company of the Pacific specifically recognized the money as an investment in Resort Holding.
44. CJ and LJ have received no return of principal or interest from their investment in the Resort

Holding Universal Lease program.

45. CJ and LJ are still owed \$28,577.69 in principal alone.

INVESTOR AB

46. In August 2003, Nielsen told AB about the investment opportunity in Resort Holding's Universal Leases. Nielsen had previously contacted AB at her home by telephone.
47. Nielsen told AB the following:
- a. The Universal Lease would pay 9% annual interest;
 - b. The investment was 100% guaranteed;
 - c. There was no risk;
 - d. The investment was rated a low risk investment by Dunn & Bradstreet;
 - e. AB could use the condo in Mexico herself, but she would lose any rental income earned during that time;
 - f. AB would own part of the resort;
 - g. The Universal Lease was a growing investment and was performing very well;
 - h. The profits generated would come from renting the condos; and
 - i. Nielsen had invested his own money.
48. However, Nielsen failed to tell her about the administrative actions against Resort Holding, Michael Eugene Kelly, and/or a company controlled by Kelly, filed by the Wisconsin Division of Securities and the Arizona Securities Division, in April and May 2003,

respectively.

49. Nielsen set up a second meeting with AB on or about August 19th, 2003. At this second meeting, AB executed the required documents.
50. AB executed a Universal Lease Agreement naming AB as the "Leaseholder" and Resort Holding International, S.A. as the "Lessor." The term of the lease under the Universal Lease Agreement is 25 years, the purchase amount is \$55,727.44, and includes sections regarding operations and maintenance fees, common areas, insurance, and default fees.
51. AB also signed the Universal Lease Application, a two page document with AB's contact and beneficiary information. Nielsen signed as the witness on the Universal Lease Application along with his sales representative identification number.
52. On or about November 13, 2003, AB gave Nielsen a cashier's check for \$55,727.44 from Jordan Credit Union, made payable to IRA Resources, Inc. AB's investment funds came from her retirement plan at Pacificorp.
53. On or about December 2, 2003, AB's investment check was deposited into an IRA with IRA Resources, Inc. On or about December 9, 2003, IRA Resources, Inc. invested AB's funds in Resort Holding's Universal Lease program.
54. After investing, AB received statements in the mail from IRA Resources, Inc. AB saw the value of her investment increase to as much as \$56,024.98, but AB never received a distribution.

55. In early 2006, Nielsen went to AB's home and told her that ownership of Resort Holding had changed hands, and the new owners were not honoring the Universal Leases. Nielsen told AB he wanted to purchase the Universal Lease from AB and put her into a different investment.
56. Nielsen never purchased AB's Universal Lease investment.
57. Nielsen has received nothing from her investment in Resort Holding's Universal Lease program. Respondents still owe AB \$55,727.44 in principal alone.

SECURITIES FRAUD

58. In connection with the offer and sale of a security, Nielsen, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. The investment paid 9% interest annually;
 - b. Resort Holding would buy back the investment after three years;
 - c. This was a good investment; and
 - d. There was no risk involved.
59. In connection with the offer and sale of a security, Nielsen, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
 - a. That in April and May 2003, the Wisconsin Division of Securities and the Arizona Securities Division, respectively, filed administrative actions against Resort Holding,

Michael Eugene Kelly, and/or a company controlled by Kelly, in connection with the offer and sale of Universal Leases. With respect to each action, the respondents were asked to cease and desist from offering and/or selling the Universal Leases.

- b. Some or all of the information typically provided in an offering circular or prospectus, such as:
- i. The business and operating history for Resort Holding;
 - ii. Identities of the principals for Resort Holding along with their relevant experience;
 - iii. Financial statements for Resort Holding;
 - iv. The market for Resort Holding's product(s) or service(s);
 - v. The nature of the competition for the product(s) or service(s);
 - vi. The current capitalization for Resort Holding;
 - vii. A description of how the investment would be used by Resort Holding;
 - viii. The track record of Resort Holding to prior investors;
 - ix. Risk factors for investors;
 - x. The number of other investors;
 - xi. The minimum capitalization needed to participate in the investment;
 - xii. The disposition of any investments received if the minimum capitalization were not achieved;
 - xiii. The liquidity of the investment;

- xiv. Discussion of pertinent suitability factors for the investment;
- xv. The proposed use of the investment proceeds;
- xvi. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
- xvii. Agent commissions or compensation for selling the investment;
- xviii. Whether the investment is a registered security or exempt from registration;
and
- xix. Whether the person selling the investment is licensed.

Sale of Unregistered Securities under § 61-1-7 of the Act

- 60. The Division incorporates and re-alleges paragraphs 1 through 58.
- 61. The Universal Lease offered and sold by Nielsen is a security under § 61-1-13 of the Act.
- 62. The security was offered and sold in this state.
- 63. The security offered and sold by Nielsen was not registered under the Act, nor was there any claim of exemption relating to the security.
- 64. Based on the above information, Boyd Kelly Nielsen violated § 61-1-7 of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

- 1. Based on the Division's investigative findings, the Division concludes that:
 - a. The investment opportunities offered and sold by Nielsen are securities under § 61-1-13 of the Act;
 - b. Nielsen violated § 61-1-1 of the Act by making misstatements of material facts and

by omitting to state material facts in connection with the offer and sale of a security.

- c. Nielsen violated § 61-1-7 of the Act by offering and selling an unregistered security to Utah investors.

III. REMEDIAL ACTIONS/SANCTIONS

65. Nielsen admits the Division's findings and conclusions and consents to the sanctions below being imposed by the Division.
66. Nielsen represents that any information he provided to the Division as part of the Division's investigation of this matter is accurate.
67. Nielsen agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
68. Nielsen agrees that he will be barred from (i) associating¹ with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
69. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of \$2,500 with the

¹“Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

following provisions:

- a. \$1,500 of the fine will be held in abeyance contingent on no securities laws violations for thirty-six months from entry of this Order.
 - b. \$100 of the fine is due to the Division upon entry of this order. The remaining balance is due at the end of the thirty-six month abeyance period;
 - c. If Nielsen materially violate any of the terms of this Stipulation and Consent Order within the abeyance period following the entry of the Order, thirty days after notice of default and opportunity to be heard before an administrative officer on the sole issue of compliance with this Order, Nielsen consents to a judgment ordering the entire fine immediately due.
70. Nielsen agrees to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.

IV. FINAL RESOLUTION

71. Nielsen acknowledges that this Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter.
72. Nielsen further acknowledges that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
73. Nielsen acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that

the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.

74. The Stipulation and Consent Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way.

Utah Division of Securities

Date: 12/5/11
By: [Signature]
Michael Hines
Director of Enforcement

Respondent Nielsen

Date: Sept. 16, 2011
By: [Signature]
Boyd Kelly Nielsen

Approved:

[Signature]
Jeff Buckner
Assistant Attorney General
J.K.

ORDER

IT IS HEREBY ORDERED THAT:

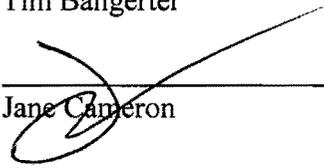
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Nielsen cease and desist from violating the Utah Uniform Securities Act.
3. Nielsen agrees to be permanently barred from the securities industry in Utah.
4. The Division imposes a fine of \$2,500, \$100 of which is due upon the entry of this order.
5. If Nielsen materially violates any of the terms of this Order the full fine amount shall be imposed against the Respondent and become due immediately.
6. \$1,500 of the fine amount shall be waived contingent on no securities violations for thirty-six months;
7. Nielsen cooperates with the Division in any future investigations.

BY THE UTAH SECURITIES COMMISSION:

DATED this 27 day of October, 2011.



Tim Bangerter

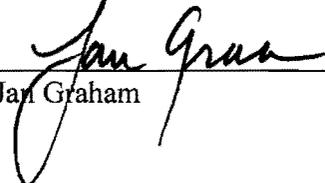


Jane Cameron

Erik Christiansen



Laura Polacheck



Jan Graham

Certificate of Mailing

I certify that on the 28th day of October, 2011, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Boyd Kelly Nielsen
1756 S. 1590 E.
Spanish Fork, UT 84660

Certified Mailing # 7007 0220 0001 0063 6493

