

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order
Issued by the California Corporations
Commissioner,

Complainant,

vs.

Jerry Shulman and LifeStyles Resorts, Inc.,

Respondents.

File No.: alpha

OAH No.: L2007050142

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated December 31, 2007, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following typographical, technical and minor changes pursuant to Government Code Section 11517(c)(2)(C).

- 1) Throughout the Proposed Decision: "Sharf" should be "Scharff".
- 2) In the sixth line of Factual Findings number 5 on page 2 of the Proposed Decision: "makes" should be "make".
- 3) In the third line of Factual Findings number 13 on page 4 of the Proposed Decision: "Respondent Shulman is a of California" should be "Respondent Shulman is a resident of California".
- 4) In Legal Conclusions number 3 (A) on page 5 of the Proposed Decision: "25107" should be "25017".

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THE CALIFORNIA CORPORATIONS
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JERRY SHULMAN and LIFESTYLES
RESORTS, INC.,

Respondents.

OAH Case No. L2007050142

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PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, held the hearing in the above-captioned matter on November 30, 2007, at Los Angeles, California. Complainant was represented by Michelle Lipton, Senior Corporations Counsel, Department of Corporations. Respondents Jerry Shulman and Lifestyles Resorts, Inc., were represented by Richard V. McMillan, with Mr. Shulman appearing personally and on behalf of the corporate respondent.

Evidence was received, the case argued and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

1. (A) On December 15, 2005, a Desist and Refrain Order (D&R) was issued by Wayne Strumpfer, then Acting Commissioner of Corporations, against Respondent Jerry Shulman, individually and as president of Lifestyles Resorts, Inc. (LRI). The D&R was executed on Mr. Strumpfer's behalf by Alan S. Weinger, then Acting Deputy Commissioner. Mr. Strumpfer and Mr. Weinger were acting in their official capacities when they issued the D&R.

(B) The D&R alleged that in 2002, Respondents offered and sold securities in California in issuer transactions, and that such securities were subject to qualification under

California securities laws. It was alleged that the securities had not been qualified when legally they should have been, and so Respondents were ordered not to sell such securities without qualification.

2. Thereafter, on or about January 12, 2006, Respondents requested a hearing on the D&R, and waived the time limits for such a hearing in their request for a hearing.

3. On May 1, 2007, Preston DuFauchard, Corporations Commissioner, acting through Ms. Lipton, filed a Complaint in Support of Desist and Refrain Order (Complaint on D&R). Mr. DuFauchard and Ms. Lipton were acting in their official capacities in filing the Complaint on D&R. In essence, the Complaint on D&R repeats the factual allegations of the D&R and seeks an order that the D&R be upheld after a hearing.

4. LRI was incorporated in California on March 27, 2002. The incorporator was Dawson L. Davenport. The stated business purpose was any lawful activity other than the banking business, the trust company business, or the practice of a profession. Under Article IV of LRI's Articles of Incorporation, it was authorized to issue only one class of stock, and the total shares it was authorized to issue was 50,000.

5. LRI was intended to acquire various resort properties that could be operated as time share or condominium properties. The properties were to be operated as destinations for adults only, who were interested in or participated in a "swingers" lifestyle. The firm was to be allied in some way with a firm known as LifeStyles Organization (LSO) which was then promoting and hosting conventions for such adults. The founder of LSO, Robert McGinley, was to be a shareholder and director in LRI, and was to make its extensive membership list available to LRI, so that the latter firm would have a market. Mr. Shulman had been working with LSO to establish the resort operation for a period of many months, from at least late 2001 until 2002.¹ Business plans were discussed, properties evaluated, and drafts of private placement memoranda were prepared and discussed by Mr. Shulman with persons associated with LSO.

6. In April 2002, LSO held one of its conventions in Miami, Florida. At that point more than one draft of a private placement memorandum had been prepared for LRI. Respondent Shulman attended that convention. During that convention, he spoke to Mr. Robert Sharf about the latter investing in LRI. He told Mr. Sharf that LRI would be operating resorts, and that Mr. Sharf would be able to purchase some Class A preferred stock in the firm. During the convention, Mr. Sharf had also received a certificate valued at \$1,000, which could be used to pay for a visit to one of the contemplated resorts, or which could be used to purchase a second class of stock in the new firm. Respondent Shulman told Mr. Sharf that there would be six percent interest on the preferred stock.

¹ The first draft of a private placement memorandum, based on one prepared for another company, bears the date October 3, 2000. (See Exhibit 3B, p.1.)

7. Thereafter, Mr. Sharf spoke to Respondent Shulman by telephone regarding the investment, and he provided more information to Sharf about the deal. The two men also communicated by e-mail, on the afternoon of April 19, 2002. In one of those e-mails, Respondent Shulman wrote Sharf, and stated:

Per our discussions in Miami, we are now accepting investment money for LifeStyles Resorts, Inc. You desire to invest \$30,000 to \$40,000 for 3,000 to 4,000 shares of the Class A, Preferred Stock. This has been approved for Friends and Family. Furthermore, the current posted dividend is 8.00% per annum. At your discretion, you may acquire 1,000 shares of Class B (Right to Use) when it comes out at the Reno show for only \$10.00 per share.

To proceed, please access the www.LifeStylesResorts.com, review the Private Placement Memorandum. Please print, sign, and return the last page that indicates a signature required. You may post-date your check, as we discussed. Please make your check payable to LifeStyles Resorts, Inc.

Please telephone or email me to confirm your participation in this Friends and Family offering.

(Exhibit 3I.)

8. Respondent Shulman sent a second e-mail to Mr. Sharf on April 19, 2002, regarding the latter's investment in the Respondent corporation, explaining how the \$1,000 certificate could be used to obtain type B shares, or as a credit for the purchase of the A (preferred) shares. He concluded this e-mail by stating "I appreciate your enthusiasm." (Exhibit 3I.)

9. Mr. Sharf printed out the private placement memorandum from the website, as directed by Respondent Shulman. He executed the document, and sent it along with his personal check for \$40,000 and the \$1,000 certificate to the Respondent corporation, in order to purchase preferred stock. His check was negotiated, but he did not receive any share certificates in LRI.

10. Mr. Sharf later called Respondent Shulman to inquire about the stock certificates. The latter was not aware of the problem and attributed it, potentially, to the fact that LRI was moving its offices into the building used by LSO. Later, in approximately August 2002, Mr. Sharf raised the issue with Mr. McGinley while the two were attending an LSO convention in Reno, Nevada. Mr. Sharf learned, at that convention, that there had been a falling out between Mr. McGinley and LSO on the one hand, and Respondents on the other hand. Eventually, Mr. Shulman caused a full refund to be made to Mr. Sharf.²

² To be sure, Mr. Sharf was under the impression that he was investing in some division of LSO. (See Exhibit 4, p. 1597, lines 1-3.)

11. (A) On a date in 2002 that is not established in the record, LRI established an internet website at the address www.lifestylesresorts.com. That website contained pages with text pertaining to investing in the business. The text of one page was entitled "Invest in Paradise", followed by the statement: "while LifeStyles Resorts promises pure pleasure, it also presents serious investment opportunities. Investors will enjoy preferred Resort benefits, plus discounts on ownership interest in future resorts. To discuss the investment strategy that suits you, or to request a Private Placement Memorandum, please call . . . or e-mail us." (Exhibit 3F, p. 1.)

(B) Another page was entitled "Own a Piece of Paradise." A portion of the text read, "Qualified investors are invited to participate as Class 'A' Preferred Investors in LifeStyles Resorts. By investing in LifeStyles Resorts, you have an interest in the parent Company, which oversees and controls the member properties worldwide. . . . Please refer to our Private Placement Memorandum." (Exhibit 3F, p.2.)

(C) While the date of the establishment of the webpage is not clear, Exhibit 3F was printed from the website on August 8, 2002 by LSO's attorney, Mr. Murray.

12. In approximately August 2002, Mr. and Mrs. Gregory, sometime employees or associates of LSO, received an e-mail that pertained to LRI. They found their way to the LRI website, and from that website, they found their way to a private placement memorandum for LRI. It is reasonably inferred that this was the same private placement memorandum to which Mr. Sharf was referred by Respondent Shulman. In the documentation, Mr. and Mrs. Gregory saw that Mr. Murray, LSO's attorney, was listed as a director of LRI. They knew Mr. Murray, and contacted him about the venture. He expressed surprise, as he was not a director of LRI.

13. At the time of the transactions and events referred to in Factual Findings 6 through 12, Mr. Sharf, Mr. Gregory, and Mrs. Gregory were residents of California. Respondent Shulman is a of California, with LRI being incorporated in California and doing business from Orange County, California. Mr. Sharf paid his \$40,000 in California.

14. Neither the Commissioner nor the Department ever qualified any securities to be issued by Respondent LRI, nor have they consented to transfer of such, nor received an application for consent to transfer pursuant to Corporations Code section 25102, subdivision (h). No Notices of Transaction under Corporations Code sections 25102, subdivisions (f) or (n) have been received by the Commissioner. No other notices have been applied for or filed, including those that might be applied for or filed pursuant to Corporations Code sections 25102.1, or under the California Code of Regulations (CCR), title 10, sections 260.105.33 or 260.105.34.

15. There is no evidence that any consumer has been harmed by any transaction by Respondents pertaining to the issuance of securities in LRI, in that Mr. Sharf received a refund, and Mr. and Mrs. Gregory never actually invested in the firm.

LEGAL CONCLUSIONS

1. The Commissioner has the jurisdiction to proceed in this matter, pursuant to Corporations Code section 25532 and 25600, based on Factual Findings 1 through 12.

2. It is unlawful for any person to offer or sell any security in an issuer transaction in California unless that sale has been qualified pursuant to sections 25111, 25112, or 25113 of the Corporations Code, or unless the transaction is exempted or not subject to qualification pursuant to Corporations Code section 25100, et. seq. This Conclusion is based on Corporations Code section 25110.

3. (A) The publication of the information contained in LRI's website, and the statements made by Respondent Shulman to Mr. Sharf, constituted offers to sell securities within the meaning of Corporations Code section 25107, subdivision (b), based on Factual Findings 6 through 9, 11, and 12.

(B) The offers to sell securities in LRI were made within California, based on Corporations Code section 25008, subdivision (a), and Factual Findings 6 through 9, and 11 through 13, and said offerings were made by an issuer within the meaning of the Corporate Securities Law, based on Corporations Code section 25010 and Factual Findings 6 through 13.

(C) The transaction with Mr. Sharf constituted a sale of a security within the meaning of Corporations Code section 25017, subdivision (a), based on Factual Findings 6 through 9.

3. (A) Respondents bore the burden of proving that the offer to sell or sale of any securities were subject to an exemption or exception from qualification, based on Corporations Code section 25163.

(B) Respondents have failed to carry their burden of proving that the offers and sale of securities in LRI were exempt, or subject to an exception, based on Corporations Code sections 25102, subdivisions (f), (h), and (n).

(C) Subdivision (f) of Corporations Code section 25102 is unavailing to Respondents, in that offers were made by the publication of advertising. This Conclusion is based on Factual Findings 7 through 11 and section 25102, subdivision (f)(2).

(D) Corporations Code section 25102, subdivision (h), does not provide an exemption because that exemption may be utilized only when there is one class of stock. While the Respondent corporation's Articles of Incorporation provided for one class of shares, Respondents were promoting two classes, and purported to sell Mr. Sharf preferred stock. This Conclusion is based on Factual Findings 6 through 9.

(E) The exemption described in Corporations Code section 25102, subdivision (n), was not established by Respondents, because no notice of transaction was ever filed with the Commissioner as required by subdivision (n)(7) of section 25102. This Conclusion is based on Factual Findings 14.

4. Cause exists to order Respondents to desist and refrain from the offer or sale of any unqualified securities in LRI, or from offering to sell such unqualified securities in that firm, based on Legal Conclusions 1 through 3, and Factual Findings 1 through 14, as such transactions were in violation of Corporations Code section 25110.

ORDER

The Desist and Refrain Order issued by the Commissioner to Respondents Jerry Shulman and LifeStyles Resorts, Inc., is hereby upheld, and the appeal from it is denied.

December 31, 2007

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings