

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL E. KELLY

FILED

DEC 22 2006

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

MAGISTRATE JUDGE DENLOW

06CR0964

CASE NUMBER:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. During the period from 1999 to the present in DuPage County, in the Northern District of Illinois and elsewhere defendant did knowingly devise and intend to devise a scheme to defraud, and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises and by material omissions, and for the purpose of executing and attempting to execute the scheme, did knowingly cause to be delivered by interstate carrier according to the direction thereon, a parcel by Federal Express containing an interest payment addressed to Individual A in Naperville, Illinois, from Cancun, Mexico, on or about December 19, 2003, in violation of Title 18 United States Code, Section(s) 1341. I further state that I am a Special Agent of the Federal Bureau of Investigation and that this complaint is based on the following facts:

See the attached affidavit

Continued on the attached sheet and made a part hereof:  Yes  No

*Jennifer Lea French*  
Special Agent Jennifer French

Sworn to before me and subscribed in my presence,

December 22, 2006  
Date

at Chicago, Illinois  
City and State

Morton Denlow, Presiding Magistrate Judge  
Name & Title of Judicial Officer

*Morton Denlow*  
Signature of Judicial Officer

STATE OF ILLINOIS        )  
  ) ss  
COUNTY OF COOK         )

AFFIDAVIT

I, Jennifer Lea French, being duly sworn on oath, hereby depose and state the following:

1. I have been employed as a Special Agent for the Federal Bureau of Investigation since August of 1996. For the past nine and one-half years, I have been assigned to the Financial Institutions Fraud (FIF) squad, which routinely investigates bank fraud, money laundering, mail and wire fraud and conspiracy.

2. The information contained in this affidavit is based upon personal knowledge derived from information I have received from other law enforcement agents, my participation in witness interviews, my review of interview reports, real estate documents, court transcripts and reports of investigation. This affidavit is submitted for the limited purpose of establishing probable cause to support the attached criminal complaint charging Michael E. Kelly with devising a scheme to obtain money from investors by means of materially false and fraudulent pretense, representations or omissions, and for the purpose of executing that scheme and attempting to do so, by knowingly causing the use of the U.S. Mail or a private or commercial interstate carrier in furtherance of the scheme, all in violation of title 18, United States Code, Section 1341. Due to its limited purpose, I have not included all of the information that I know about this investigation in this Affidavit.

3. In summary, the evidence gathered to date in the ongoing investigation shows that the scheme involved raising over \$400,000,000 from hundreds of investors across the United States through the offer and sale of the so-called universal lease. The universal lease purported to be a form of time share in certain Mexican hotels owned or leased by Mike Kelly. Prospective investors had three options. They could buy the universal lease and use the hotel time share. As a second option, they could buy the time share and rent it to someone else. The third option, which substantially all of the purchasers chose, was to purchase the universal lease and allow a purported independent party chosen by Michael Kelly to rent the time share to others. (As detailed below, despite Michael Kelly's contrary representation, he controlled the purported independent third party.) This option

included an 11% annual return, whether or not the room was rented. Later, the return offered changed to 9%, but it still did not depend on the room being successfully rented. This option also included the right to sell the universal lease back after a holding period.

4. For instance, an investor from Naperville, Illinois, invested \$40,000 in universal leases in April 2003 and chose the third option. As part of the paperwork for her investment, this investor received a management agreement from Majesty Travel, which stated, in part:

The Administrator agrees to assume all responsibility for renting the Client's vacation unit. The Administrator agrees to pay the Client for rental of the vacation unit as follows: The Client will receive 4% per year of the Vacation Unit Interval's purchase price as rental compensation for the rental of the vacation unit. The Administrator also offers to purchase the vacation unit from the Client after the 36<sup>th</sup> month of the Agreement term if, at any time, the Client decides to sell the vacation unit. In return, the administrator will pay the Client 5% per year premium for this option.

In other words, a 9% return per year. As another example, another investor's paperwork contained an agreement with World Phantasy Tours, as follows:

The Servicer agrees to assume all the responsibility for renting the Leaseholder's vacation unit and in return, the Leaseholder will receive 6% of the Lease's purchase price annually. The Servicer further offers to purchase the Lease from the Leaseholder at Leaseholder's purchase amount at such time the Leaseholder wants to sell the Lease beginning the 25<sup>th</sup> month of the Lease and will pay the Leaseholder a 5% per year premium upon the purchase of the Lease.

In other words, an 11% return.

5. In approximately 2004, purchasers were informed, contrary to what they were informed when making the investment, that the returns were being essentially unilaterally reduced to about 5%. The receipt of return payments by investors then became sporadic and by 2005 stopped. Hundreds of investors, who sent several hundred million dollars over a five year period to a Michael Kelly controlled entity, are still owed most of that money.

#### **Michael Kelly**

6. Michael Eugene Kelly, also known as Michael E. Kelly and Mike Kelly, Sr. (hereinafter "Michael Kelly"), was born October 6, 1949. He is a citizen of the United States, but maintains

residences in Cancun, Mexico and Panama.

7. From 1997 through 2006, Michael Kelly operated numerous companies that offered three different investment opportunities. The first offering was called a "nine-month note". The second offering, the so-called universal lease, is the main focus of this Affidavit. The third offering related to an ongoing development project known as "Puerto Cancun" and will not be addressed in this Affidavit.

8. From late 1997 until March of 2004, Michael Kelly's companies maintained offices within the Northern District of Indiana and the office addresses appear on company publications. The main office location, from 2000-2004, was in South Bend, Indiana. All of the Indiana offices operated in conjunction with Michael Kelly's corporate office in Cancun, Mexico and businesses in Mexico, Belize and Panama.

9. From 1997 until late 2000, Michael Kelly's Mexican businesses operated from an address used by the Avalon Grand and the Avalon Baccara Hotels on Kukulan Boulevard, KM 11.5, Cancun, Quintana Roo, Mexico. In late 2000, the corporate headquarters moved to an office building located at 82 Coba, S.M.3, Lote 10, 3ERP, Cancun, Quintana Roo, Mexico.

10. During the time period covered by this Affidavit, Michael Kelly owned the following hotels: Avalon Baccara, Avalon Grand Cancun, Avalon Grand Panama, Avalon Reef Club (Isla Mujeres), Avalon Excalibur Acapulco, and Avalon Reef Club Belize. The Avalon Grand Panama was not included in the universal lease program sold to US citizens. In his videotaped presentations, Michael Kelly spoke about each hotel and when it was purchased by him. This information is also included in each of the Universal Lease brochures provided to brokers and leaseholders as part of "The Avalon Story".

#### **Nine-Month Notes**

11. From late 1997 through mid-1999, nine-month notes were offered and sold through a company controlled by Michael Kelly called Yucatan Investment Corporation (YIC). The nine-month notes purportedly paid investors a set annual interest rate. These notes were routinely extended past nine months and offered returns ranging from 9% to 13%.

12. By June 1999, the states of South Carolina and New Mexico had issued Cease and Desist orders against Michael Kelly and YIC in connection with the offer and sale of the notes. The states

of Minnesota, Connecticut, Indiana and others followed. In September of 1999, Michael Kelly had stopped selling nine-month notes and began offering a new investment known as a universal lease.

### Universal Lease

13. Michael Kelly offered and sold the universal lease investment through a company he controlled called Resort Holdings International (RHI) and a number of broker/salesmen. (This was just one of the companies operated by Michael Kelly during this time period, some of which had similar names.) Participants in the universal lease essentially purchased the right to use one specific room at one of Michael Kelly's Cancun hotels for one specific week. According to the Broker Handbook, Universal Lease Program Questions and Answers, Section 2, Page 12 (RHI 004499), the minimum investment was \$5000.00.

14. Prospective salesmen traveled to Cancun frequently to attend a three or four day "due diligence" trip. As part of this trip, they were given tours of the hotels and offices and were required to sit through a presentation by Michael Kelly on the universal lease. I have reviewed at least two of these presentations, which were videotaped. In the presentation, Michael Kelly claimed that the universal lease was not a security because the leaseholder had the option to 1) use the room personally for their designated week; 2) sell it to another user; or 3) enter into a contract with an independent third-party management company that would rent the room and pay the universal leaseholder a return, whether or not the room was rented. This information was also in the universal lease brochures given to the prospective salesmen (Broker Handbook, Section 2, Page 4 (RHI 004491).

15. The vast majority of leaseholders that have been interviewed chose the third option: to allow a purported independent third party management company to rent their room and which would then make monthly payments to the leaseholder on their initial investment. According to the brochure, the initial management company was called World Phantasy Tours, Inc, dba Majesty Travel. (Broker's Handbook, Section 5, Page - RHI 004540). The rate of return initially was 11%, and was later reduced to 9%. For the first few years of the program, these monthly payments were sent to the hundreds of universal leaseholders in the United States via Federal Express, giving them

the sense that all was well with the investment.<sup>1</sup>

16. According to a letter sent to all universal leaseholders dated June 8, 2004, the independent third party was changed as of that date to Galaxy Properties Management, S.A. This letter also informed the leaseholders that their "rental compensation payments will be applied to [a] debit card on the specific due dates... You may then choose to have these funds transferred directly to your checking account or you may use the debit card at any ATM machine or any location that displays the Star or Plus symbol." According to at least five leaseholders who received payments in this manner, the new monthly amounts from Galaxy were decreased to reflect a rate of return of approximately 5%.

17. Unbeknownst to the individual leaseholders, Michael Kelly controlled the supposed independent third party. Based upon my review of financial records received from various banks in the United States and an analysis of those records prepared by the Arizona Department of Securities, as new investors purchased Universal Leases, their monies were deposited into bank accounts controlled by Michael Kelly in the United States and then used to make the monthly payments to old leaseholders. All of the leaseholders interviewed believed that these monthly payments were coming from the independent third party company. However, according to Individual A who worked in the bookkeeping department of RHI, checks that were supposed to be written by Majesty Travel were actually written by RHI employees.

18. Additionally, according to Individual A and Individual B, a former employee who oversaw operation of the Universal Lease office, Majesty Travel records and contracts were kept in the same filing cabinets in the Cancun offices as the original RHI Universal Lease documents. Individual A also advised that, for a period of time, Mike P. Kelly (Jr.) signed both the Universal Lease contracts and the Majesty Travel contracts, even though the two companies were supposed to be independent and separate from one another, as indicated in the presentations and brochures. There is also testimony from at least three brokers and two former universal lease employees that Michael Kelly assured them that he kept the Majesty Travel stock in his desk drawer at the Hotel

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<sup>1</sup>For instance, one 76-year-old investor said that she and her husband thought the investment looked pretty good since they were receiving their interest payments. They decided to invest more by taking out a reverse mortgage on their home.

Baccara and that this gave him control over the company.

19. Despite raising over \$400 million during the five-year period that the universal lease was offered in the United States, monthly "rental" payments to leaseholders were greatly decreased in early 2004 and then ceased altogether in mid-2005. It coincided with Michael Kelly's decision not to sell the universal lease in the United States anymore and his \$40 million purchase of the 808 acres which were to become Puerto Cancun.

20. Individual B, who worked for Kelly on the universal leases in Cancun, estimated that over \$450,000,000 was raised selling universal leases during the five years he worked there. This former employee observed that when the sales of the universal leases stopped in the United States, there were no funds to pay investors. He also related a conversation with Michael Kelly and another individual about universal leaseholders not getting paid. Michael Kelly essentially asked the individual, "So, you want me to sell everything and pay everyone back?" When the individual said yes, Michael Kelly responded, "then we're all f\*\*\*ed."

21. An interview of another former employee, who worked in handling paperwork for the universal lease investment, indicated that universal lease monies were sent to Michael Kelly's Avanti car dealership in Georgia. Additionally, other witnesses indicated that Michael Kelly lived a lavish lifestyle, including purchasing large homes for most of his family members and himself, the acquisition of a numerous sports cars, a large yacht and a private plane, and the opening of a nightclub in Cancun.

22. Kelly purchased the Avanti dealership in 1999 and opened a manufacturing plant in Villa Rica, Georgia. Several witnesses have advised that the company sold so few automobiles, and its costs were so high, that it could not make its payroll without the infusion of cash from Michael Kelly. From April 19, 2002 through May 20, 2003, \$2.5 million was transferred from the Resort Holdings International Lease Account at National City Bank to the Avanti Motor Corp. Although Kelly has since unsuccessfully offered the company for sale, he recently moved the entire plant to Cancun, Mexico.

23. Two witnesses have advised that Universal Lease funds went into a "large pot" that Kelly controlled. Some businesses were purchased from this "large pot", but it also funded Michael Kelly's lavish lifestyle. Four witnesses stated that Kelly purchased homes in Cancun for himself, his son

Michael Paul Kelly, his son Donald Kelly and his daughter, Lori Kelly Levy. According to four witnesses, residences were also purchased in Panama and Florida. Witnesses advised, and photographs have confirmed, that Kelly purchased a yacht named "Carpe Diem" as well as other watercraft. According to three other witnesses familiar with Kelly's home, Kelly owned between 25 and 30 Avanti automobiles in Cancun and Georgia. Three witnesses have also advised that Kelly provided his son, Michael P. Kelly, with \$10 million to fund the construction of a large nightclub in Cancun. The club operates under the name "The City". Michael P. Kelly's control over "The City" has been confirmed by company publicity statements and published interviews.

#### Individual Leaseholders

24. Individual C and her husband were introduced to the Universal Lease program by Broker One. Broker One told Individual C that the investment would bring her 9% return and that he himself had invested in it personally. In April of 2003, Individual C agreed to invest in the Universal Lease and gave Broker One a check for \$40,000 payable to RHI.

25. Individual C chose Option Three and entered into an agreement with the third-party management company at the time, World Phantasy Tours. Under the agreement, World Phantasy Tours would rent out the hotel room and then send Individual a fixed amount each month. These monthly payments started coming to Individual C in May of 2003 and were sent by Federal Express. In particular, Federal Express records indicate that a package was delivered to Individual C at her home in Naperville, Illinois on or about December 19, 2003. The invoice number was 1-526-34527 and the tracking number was 644393731308. The sender listed on the receipt is Beatriz Solorzano, Yucatan Investment S.A. de CV, Zona Hotelera, Cancun 77500 QR 77500 MX.

26. In July of 2003, Individual C and her husband traveled to Cancun, Mexico for three or four days to perform their own "due diligence". The trip was set up by Broker One, who accompanied them on the trip. During the trip, Individual C and her husband met personally with Mike Kelly Sr. who told them about his hotel holdings and his plans for the future. In particular, he told them about his newest project, Puerto Cancun and that he anticipated making \$100 billion in revenue from the new project.

27. Sometime in early 2004, the independent third party management company changed over to Galaxy Properties. Individual C received a letter telling her of the change and informing her that



the rate of return would now be reduced to 5%. Galaxy missed several payments in late 2004, made payments for February, March, April and June, 2005 and then ceased making payments all together. When Individual C started calling Galaxy to find out where her missing payments were, they were told that they had not received the money from RHI. When Individual C called RHI, she was told that they had already sent the money to Galaxy. Individual C has not received any payments since June 2005 and has not received her original investment back.

#### Individual D

28. Individual D was introduced to the Universal Lease program by his insurance broker, Broker Two. Individual understood the investment to be some sort of ownership in a resort property and that it paid a 9% rate of return. Individual D was in a retirement home at the time and agreed to invest \$10,000.00 in the Universal Lease program. Individual D wrote a check for that amount payable to RHI and Broker Two came to the retirement home to pick it up. Individual D does not remember choosing between any three options and just knew that he wanted to receive monthly payments from his investment.

29. These payments were sent to Individual D via Federal Express. In particular, Federal Express records indicate that a package was delivered to Individual B at his home in McHenry, Illinois on or about December 19, 2003. The invoice number was 1-526-34527 and the tracking number was 644393729753. The sender listed on the receipt is Beatriz Solorzano, Yucatan Investment S.A. de CV, Zona Hotelera, Cancun 77500 QR 77500 MX.

30. Individual D subsequently received a letter informing him that the rental agency had changed from World Phantasy Tours to Galaxy Travel and that payments would now be received by automatic deposit into his bank account. These payments were also decreased from his original amount.

31. Individual D stopped receiving his monthly payments in May of 2005. When he called Galaxy to ask about his missing payments and about getting his principal back, he was told that the chances of that happening were "slim".

#### Individual E

32. Individual E and his wife were introduced to the Universal Lease program by Broker Three. Broker Three convinced Individual E and his wife to take out a reverse mortgage on their

condominium and agreed to invest \$100,000.00 in the Universal Lease program. They started receiving monthly payments in May of 2003 and were "dazzled" by the 9% interest rate.

33. Individual E and his wife received their monthly payment via Federal Express. In particular, Federal Express records indicate that a package was delivered to Individual E at his home in Morton Grove, Illinois on or about December 19, 2003. The invoice number was 1-526-34527 and the tracking number was 644393731260. The sender listed on the receipt is Beatriz Solorzano, Yucatan Investment S.A. de CV, Zona Hotelera, Cancun 77500 QR 77500 MX.

34. In or about June of 2004, the management company changed from World Phantasy Tours to Galaxy Property Management. Individual E received his next monthly payment via electronic transfer into his bank account and in a lesser amount. These smaller payments continued for a few more months and then they stopped altogether. When this happened, Individual E called Broker Three and asked about getting his month back. Broker Three told Individual E that he had also personally invested money in the program and was trying to get all of his investors' money back but was not having much success. Individual E has not received any of his principal back nor any of his missing monthly payments.

#### Individual F

35. Individual F was introduced to the Universal Lease program by Broker Four. Individual F invested \$5000.00 in the program in early 2002 and understood that he was basically purchasing a timeshare in Cancun, Mexico. After giving Broker Four the check for \$5000, Individual F received monthly payments from Cancun. Federal Express records indicate that a package was delivered to Individual F at his home in McHenry, Illinois on or about April 12, 2002. The invoice number was 4-167-95806 and the tracking number was 604361947314. The sender listed on the receipt is Beatriz Solorzano, Yucatan Investment S.A. de CV, Zona Hotelera, Cancun 77500 QR 77500 MX.

36. In or about May of 2005, Individual F contacted Broker Four and asked him to get his money out of the Universal Lease program. Broker Four told Individual F that he was trying to get all of his investors out of the program and that this shouldn't be too much of a problem. Individual F has never received his principal investment back.

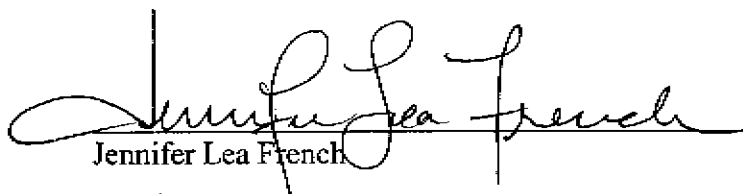
#### Broker Four

37. Broker Four invested approximately \$500,000 of his own money in the Universal Lease

program and a total of \$305,000 of his mother's money as well. When Broker Four agreed to sell the Universal Lease, he traveled to Cancun, Mexico and attended a seminar presented by Michael Kelly regarding the Universal Lease.

38. As previously stated, all of the prospective broker/salesmen traveled to Cancun for a due diligence trip prior to selling the universal lease program to their clients. Many of the broker/salesmen invested their own money in the universal lease program. The vast majority of leaseholders and brokers also thought that the company would be obligated to repurchase the lease after a three year term. As part of a presentation which he gave to all salesmen during their due diligence trips, Michael Kelly made it clear that, because the value of the hotel room would increase, he would gladly repurchase anyone's Universal Lease after a three year period. This did not turn out to be true as most of the leaseholders have discovered over the past 18 months. Despite sales of over \$400 million, most leaseholders have given up hope that they will ever see their missing payments and their initial investment monies.

39. Based on the foregoing, there is probable cause to believe that Michael Kelly has devised and intended to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises and material omissions, and for purposes of executing and attempting to execute the scheme, knowingly caused a parcel to be delivered by interstate carrier according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

  
Jennifer Lea French

Subscribed and sworn to  
before me this 22nd day of  
December, 2006

Motor DeLaw

U.S. Magistrate Judge