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## GENERAL NOTICES

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### NOTICE 1764 OF 2004

#### DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, MP, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 1904 of 2001 as published in Government Gazette No. 22599 dated 24 August 2001, as set out in the Schedule.



**M B M MPAHLWA**

**MINISTER OF TRADE AND INDUSTRY**

#### SCHEDULE

## **CONSUMER AFFAIRS COMMITTEE**

**REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS  
(UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT NO 71 OF 1988)**

**REPORT NO 112**

**Investigation in terms of section 8(1) (a) of the  
Consumer Affairs (Unfair Business Practices) Act, 1988,  
into the business practices of Holiday Concepts Marketing (Pty) Ltd  
and Anthony Vernon Strelensky, trading as Coral Cove Club,  
Coral Cove Trust and Holiday Concepts**

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## 1. AN INTRODUCTION TO THE CONSUMER AFFAIRS COMMITTEE

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of certain business practices. An unfair business practice is defined as any business practice which could harm the relationship between businesses and consumers or which will unreasonably prejudice, deceive or unfairly affect consumers.<sup>1</sup>

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister of Trade and Industry (the Minister). The Act confers wide investigative powers on the Committee. There are two types of investigations which the Committee may undertake when examining the business practices of an individual or a particular business namely: an "informal" section 4(1)(c) investigation<sup>2</sup> or a "formal" section 8(1)(a) investigation<sup>3</sup>. The usual procedure when the Committee receives a complaint from a consumer, is to undertake a 4(1)(c) investigation. This investigation enables the investigators to make preliminary enquiries in order to establish how the business operates. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* and details of the investigation are not made public. However, if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the 8(1)(a) investigation is published in the *Government Gazette*.<sup>4</sup> The Minister is not empowered to make any decisions about the discontinuance of a particular business practice on the strength of a 4(1)(c) investigation. He may do so following an 8(1)(a) investigation.

The Act does not stipulate that an 8(1)(a) investigation must be preceded by a 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the 4(1)(c) investigation.

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<sup>1</sup> See section 1 for the definition of an unfair business practice

<sup>2</sup> These investigations are commonly referred to as 4(1)(c) investigations

<sup>3</sup> These investigations are commonly referred to as 8(1)(a) investigations

<sup>4</sup> In many instances the Committee is able to resolve the matter and it is not necessary for the matter to proceed to a formal investigation.

Should the Committee, after an 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action to the Minister to ensure the discontinuance of that practice.<sup>5</sup> The Minister's order is published in the *Government Gazette*. An infringement of the order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both a fine and imprisonment.

## **2. THE TIMESHARE INSTITUTE OF SOUTHERN AFRICA**

The Timeshare Institute of Southern Africa (TISA) is a voluntary industry association with the objective of creating, maintaining and developing high industry standards, ethics and integrity in the timesharing industry. TISA is a self-regulatory body that facilitates a mediation process between parties who have a dispute, so that the matter can be resolved. Should TISA not be in a position to resolve the matter it could be referred to the Committee for investigation.

Mr Anthony Vernon Strelensky's (Strelensky) activities in the time-sharing industry were brought to the attention of the Committee by TISA. TISA was approached by the attorney of one of Strelensky's clients. The client paid Strelensky R42 000 towards the purchase of timesharing weeks.

## **3. BACKGROUND TO THE TIMESHARING INDUSTRY AND RELATED CONCEPTS**

The name "time share" describes the concept exactly. A year is divided into 56 weeks. These weeks are purchased by individuals who then have the right to use the accommodation and facilities for the week bought. Consumer "A", for example, could have bought two weeks in January of each year and consumer "B" could have bought one week in December of every year. "A" is thus entitled to his two weeks accommodation during January and "B" will be entitled to his one week during December. The buyers of time share units buy their weeks as one would buy a flat or house. Owners of time share units are liable for an annual levy covering, maintenance of the property, rates and taxes and management services.

There were many irregularities in the time share industry and the Committee developed a consumer code for the timesharing industry in conjunction with TISA. This code

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<sup>5</sup> The powers of the Minister are set out in section 12

governs business practices within the timesharing industry by protecting the interests of both consumers and the industry and promoting an equitable balance between these interests.

### **3.1 TIMESHARE AND TIMESHARE RIGHTS POOLING SYSTEMS**

Timeshare rights are rights derived from agreements between consumers and timeshare developers, entitling the consumer to the recurring occupation of premises for a limited duration, which duration may be for a determined or indeterminate length of time. The period of occupation is typically a fixed period per year, such as a specific week in the year. The fixed period is an annually recurring event, so that the consumer has a right of recurring use or tenancy, interspersed with similar tenancies of other consumers. The premises are usually a unit in an apartment complex but may also be other property.

A timeshare pooling scheme (points club) consists of a number of timesharing weeks or stock "deposited" by timeshare owners in exchange for points in the pool. Further stock for the pool is purchased by the company selling points (the vendor company or the points club) to increase its stock. The increased stock offers the timeshare owners a wider choice of resorts and makes possible the selling of points to other members of the pooling scheme. In a timeshare pooling scheme timeshare rights are derived from agreements reached between the administrator of the pooling scheme and the owner of the timesharing interest.

The Property Timesharing Control Act, 1983 (Act No.75 of 1983) sets out stringent requirements for all timesharing schemes regarding the scheme documentation and the administration of the scheme. In terms of the definition contained the Property Timesharing Control Act, pooling schemes are based on a timeshare scheme under pinned by a trust or a club.

It was stated above that the vendor company purchases timesharing interests. These interests consist of proprietary rights (timeshare weeks) and usage rights (pool points purchased by those that did not contribute any timeshare weeks). The vendor company registers these rights in the name of the property-owning trust.

It was also stated above that the vendor company buys stock or time share weeks for the pool. As a *quid pro quo* the property-owning trust retains the proprietary rights of the timesharing weeks and cedes the use rights (to use the accommodation and

facilities of a resort) back to the vendor company as points rights or accommodation credits. This enables the vendor company to sell the use rights to clients. The property-owning trust in which the timeshare interests are registered protects clients' investments.

The points rights or accommodation credits allocated to a specific timesharing interest depends on the grading of the resort, the size of the unit, the resort amenities and the time of the year the unit is available. Vendor companies administering points schemes compile points tables or guides wherein they grade the resorts in which they acquired weeks and allocate points in respect of the usage rights.

To ensure that control is maintained on the points rights and the accommodation held in the trust, the provisions of the Property Timesharing Control Act, Shareblock Control Act, 1980 (Act No. 59 of 1980) and Sectional Titles Act, 1971 (Act No. 66 of 1971) must be adhered to. For example, in a typical points scheme with a registered property trust, the total points annually assigned to a unit are usually ensconced in the constitution of the vendor company. This ensures that the vendor company cannot diminish or increase the value of the usage rights at will.

### 3.2 THE PROPERTY TIME-SHARING CONTROL ACT, 1983

A "time-sharing interest" is defined in the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983) as meaning, **in relation to a property time-sharing scheme, any right to or interest in the exclusive use or occupation of accommodation, during determined or determinable periods during any year, of accommodation.**

The Property Time-sharing Control Act defines any "property time-sharing scheme" as

1. any scheme, arrangement or undertaking in terms of which time-sharing interests are offered for alienation or are alienated and the utilization of such interests is regulated and controlled, whether such scheme, arrangement or undertaking is operated pursuant to a share block scheme, any scheme under which time-sharing interests connected with rights to membership of or participation in any club are granted, any time-sharing development scheme based on the alienation of undivided shares in a unit as defined in section 1 of the Sectional Titles Act, 1971, or otherwise; or



2. any scheme, arrangement or undertaking declared a property time-sharing scheme by the Minister of Industries, Commerce and Tourism by notice in the Gazette for the purposes of the Property Time-sharing Control Act, in terms of which interests in the use or occupation of immovable property, or any portion thereof, defined in the notice, are sold or leased.

The Property Time-sharing Control Act attempts to improve the position of timeshare participants by imposing certain substantive and administrative requirements. Time-sharing interests can be validly alienated only if the alienation is embodied in a contract signed by the parties or by their agents, acting on their written authority.

The contract must contain certain specified particulars, such as a description of the relevant immovable property and a statement as to whether such immovable property is held by the seller by virtue of ownership or lease and, in the case of a lease, the name and address of the lessor and the duration of the unexpired period of such lease.

If the immovable property is encumbered by a mortgage bond, the contract must state the name and address of the person, in favour of whom, or, in the case of a participation bond, the name and address of the relevant nominee company referred to in the Participation Bonds Act, 1981, (Act No. 55 of 1981), in favour of which the mortgage bond is registered at the time the contract is concluded.

There are certain provisions which, if contained in the contract, would be invalid. This includes a provision whereby any person who acted on behalf of the seller in connection with the conclusion of the contract or the negotiations which preceded the conclusion of the contract, is appointed or is deemed to have been appointed as the agent of the purchaser.

In the Property Time-sharing Control Act the term "alienation" is used to refer to both "sale" and "lease". This reference to "sell", and other references to "purchaser" and "seller" indicate that, for the purposes of the Property Time-sharing Control Act time-sharing interests are viewed as objects capable of being bought and sold.

Advertisements relating to the alienation of time-sharing interests must contain certain prescribed information, for example full particulars regarding the legal basis on which time-sharing interests in the particular property time-sharing scheme are acquired and the total number of years during which a prospective purchaser of a time-sharing interest in relation to a time-module shall have the right to exercise his rights in respect of it.

### 3.3 THE SHARE BLOCKS CONTROL ACT, 1980

A "share block scheme" as defined by the Share Blocks Control Act, 1980, Act No. 59 of 1980, means any scheme in terms of which a share confers a right to or an interest in the use of immovable property. Although there are other ways of structuring timeshare rights, share block schemes have proved the most popular.

Under a share block scheme a share block company obtains rights to land and buildings for use or occupation by the shareholders of the company. A fact which is not always realised by consumers is the fact that the assets of a company belong to the company and that the members have no rights to the property of the company. In the case of a share block company any immovable property owned by the company or any of its rights to movable property of which it is not the owner and in respect of which it operates a share block scheme may be alienated or ceded only with the approval by special resolution of a general meeting of the company.<sup>1</sup>

If any share of a company confers a right to or an interest in the use of immovable property or any part of immovable property such a company is presumed to operate a share block scheme. The articles of association of a share block company must provide that a member shall be entitled to the use of a specified part of the immovable property in respect of which the company operates the share block scheme on the terms and conditions contained in a use agreement entered into between the company and such member. A "use agreement" is defined as any agreement conferring a right to or interest in the use of any immovable property in respect of which a share block scheme is operated.

When an arrangement in terms of the Share Blocks Control Act confers a right of occupation on any member of the company such a right is a personal right which entitles the member and the share block company to demand from each other the performance agreed upon in the use agreement.

The Share Blocks Control Act contains various provisions aimed at protecting the interests of shareholders. The directors of a share block company are under a duty to ensure that such accounting records as are necessary fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the company in respect of the share block scheme operated by the company, are kept in one of the official languages.

A share block company is also required to balance at intervals of not more than six months its books and records relating to any payment made in respect of loan obligations by members. Books and records and financial statements must be audited at least once annually by the auditor appointed under Chapter X of the Companies Act.

Most schemes in terms of which timeshare rights are extended to consumers are structured in terms of the Share Blocks Control Act. This means that for the purposes of a particular timeshare scheme such consumers are members of a share block company, their rights of occupation being based on a use agreement. The timeshare rights emanating from a use agreement in terms of the Share Blocks Control Act do not confer rights of ownership. The fact that an arrangement is structured in terms of the Share Blocks Control Act thus will not in itself alter the nature of the consumer's rights from personal rights to real rights, eg rights of ownership.

Consumers may sometimes erroneously equate their share block rights with rights of ownership. From the point of view of consumers a distinction which must, however, be drawn is that between real and personal rights. A personal right is a right in terms of which the one party may demand from another some or other act or performance, for example where A sells something to B, B has the right to delivery of the article. This right to delivery is a personal right. A's right to payment of the price by B is also a personal right against B. A real right, however, is a right such as the right of ownership, where the owner has the right to deal with and dispose of property largely as he wishes. The owner has a right that no one shall interfere with his ownership of his property.

### **3.4 POOLING SYSTEMS AND RESERVATION EXCHANGES**

A distinction must however be made between pooling systems and reservation exchanges.

In the case of pooling systems timeshare rights (usually personal rights) are acquired by a single entity which steps or purports to step into the shoes of the transferor of the rights. Such transferors can, for example, include an original timeshare developer, a person to whom time sharing rights have been marketed, or even another pooling organisation which transfers rights contained in its rights portfolio. The right of any timeshare consumer to transfer his rights to another timeshare consumer or to a pooling system operator will normally be defined by his contractual relationship with the timeshare developer.

As indicated above the relationship between the timeshare developer (for example a share block company) and a timeshare consumer (the member of the share block company) is based on a use agreement. As such a right is likely to be a personal right and thus the marketability of the right by timeshare consumers is limited.

A pooling system promises participants in the system the benefit of the occupation to which the original timeshare consumers were entitled by virtue of their timeshare rights. The rights of timeshare consumers who obtain rights of occupation through a pooling system may, however, differ from the rights of the original timeshare consumers.

The (personal) timeshare rights transferred to the pooling organisation are not the same rights as the rights which the pooling organisation extends to its clients. The share block rights of the timeshare holder that are transferred to the pooling system operator cannot be reissued by that operator as share block rights in the pooling organisation. It is thus not simply a matter of an exchange of rights among timeshare holders.

The timeshare rights against the timeshare developer that are transferred to the pooling system operator are likely to be extinguished as far as the transferring timeshare holder is concerned. In exchange for the timeshare rights of occupation transferred to the pooling system operator "fresh" rights are conferred on the holder, based on a contractual relationship between himself and the pooling system operator.

There is no contractual relationship between the timeshare holders who transfer rights to the operators of pooling systems and the timeshare holders who obtain rights from such operators. The relevant contractual relationships are those between the timeshare developer and holder, between the timeshare holder and the pooling system operator, and between the pooling system operator and the new timeshare holder.

Unless shares in a share block scheme are transferred to the new timeshare holder the transaction between a holder and a pooling system operator converts one type of contractual relationship with one party to another type of contractual relationship with another party. Share block rights (one type of personal right) are exchanged for quasi rights of "tenancy", or whatever the nature of these rights may be.

The question may arise whether the relationship between a pooling organisation and its membership is governed by the Property Time-sharing Control Act No. 75 of 1983. The answer to this question should be determined solely by the nature of such relationship and the terms of the Property Time-sharing Control Act. If the necessary elements as prescribed by the Act are present in the particular relationship the Act and all its requirements should be applicable. Regard being had to the definition of "share

block scheme" in section 1 of the Share Blocks Control Act, the provisions of this Act may also be applicable to certain pooling organisations.

The extension of rights through reservation exchanges, in contrast to the transfer of rights to pooling organisations, does not extinguish the timeshare holder's original timeshare rights, replacing them with new rights. A reservation exchange serves as a mechanism through which timeshare holders temporarily swap benefits of their timeshare rights for benefits of the timeshare rights of other timeshare holders.

The consideration for timeshare rights is customarily paid in the form of a single payment and/or in instalments. The contract usually also includes an obligation to pay a regular levy such as a quarterly or annual levy which is applied towards the maintenance and upkeep of the building and facilities in question. Timeshare schemes and sectional title schemes have the payment of levies in common. This similarity may possibly contribute to a perception among consumers that timeshare rights are rights of ownership.

A timeshare holder's financial obligation consequently consists of two segments, namely a fixed portion (payable in a lump sum or in instalments) and an open ended or escalating portion (levies), the amount of which may be periodically determined and adjusted by the timeshare developers.

### **3.5 THE MANAGEMENT ASSOCIATION**

The management association is the representative body of the members of the pooling scheme. The management association by virtue of its constitution is the beneficiary of the trust thereby completing the commercial circle and contractual relationships of the various parties in the scheme. The absence of a property trust implies that the "points rights" sold to clients have no legal origin. The purpose of the property-owning trust, is to hold title to the weeks for the benefit of the management association.

The management association carries out the duties set out in the constitution of the vendor company as required by the Property Time Share Control Act. These duties *inter alia* include:

- (a) the management and administration of the scheme for the benefit of its members,
- (b) the issuing of points rights to members,

- (c) procuring the proper maintenance of the accommodation and ensuring that the accommodation remains in a state of good repair,
- (d) establishing a levy fund, sufficient in the opinion of the executive committee of the association, for the management, administration and control of the scheme,
- (e) establishing a levy fund for the maintenance, repair and upkeep of the accommodation that shall include all aspects relating to the management of the scheme and the maintenance of the accommodation,
- (f) the administration of the points scheme so that the usage rights are protected,
- (g) administration of reservations made,
- (h) the collection of members' levy fees, and
- (i) to pay levies due to the resorts where the timesharing interests emanate from.

In summary, the vendor company operates the pooling scheme according to the scheme rules. The property-owning trust is constituted to safeguard and hold title to accommodation included in the scheme according to the provisions of the trust deed. The management association consists of members who are holders of points rights in the scheme. The members are entitled to the use and occupation of the units for a specific time in relation to the number of points purchased.

#### **4. CONSUMER CODE FOR THE TIME-SHARING INDUSTRY**

##### **4.1 PROVISIONS APPLICABLE TO CLUB OR TRUST SCHEMES**

Where a time-sharing scheme is based on a club or a trust, and the rights of members to time-sharing are identified by points, or any similar system, such schemes shall:

Furnish the Committee with a certificate from an Auditor, in such form as the Committee may require, verifying that:

- The stock of time-sharing held by the club/trust is sufficient to satisfy the number of points or rights held by club/trust members. The certificate must indicate the average points or similar identification system, required by such member to occupy peak, mid and low season weeks, the number of weeks held and the number of members which fall into these three categories, with due regard to the grading system used by the time-

sharing scheme.

- The levies due and payable by the club/trust have been paid.
- Systems employed by the club/trust are capable of performing, monitoring and executing the functions, control and provisions contained in the club/trust's scheme documentation.
- The auditor's certificate shall be furnished within six months of such time-sharing being offered for alienation by the club/trust time-sharing scheme, and shall thereafter be furnished at six monthly intervals.
- The alienation of time-sharing in such a club/trust time-sharing scheme shall provide prospective purchasers at each point of sale with a schedule reflecting the names of the resorts, as well as the number of weeks in those resorts held by the club/trust time-sharing scheme. Such schedule shall reflect a minimum number of resorts/weeks so held, and it shall not be a contravention if in fact the club/trust scheme holds more than the stock of time-sharing so described, at the time of sale.

## **5. STRELENSKY'S SCHEME**

As was mentioned earlier in this report the activities of Strelensky came to the attention of the Committee through a complaint forwarded by TISA.

A previous scheme of Strelensky that the Committee was aware of involved his father. They sold timeshare in Coral Cove and Sheraton Place. These two resorts were not registered in their names nor did they ever operate as timeshare resorts. Strelensky and his father also operated the Coral Cove Holiday Club and sold memberships. These memberships gave members the right, to use and occupy such holiday interests in selected resorts of which the Coral Cove Trust held title. The scheme was stopped before the Committee could investigate their activities. The matter was removed from the agenda of the Committee.

When the matter again came to the attention of the Committee officials met with Strelensky and his attorney Ms Kruger, at her office in Roodepoort. Before this meeting, many unsuccessful attempts were made to meet with Strelensky and many messages were left for Strelensky at various contact numbers available to the Committee.

According to Strelensky he was not presently involved in the time-sharing industry. He

argued that he only serviced the thirty members of his club. According to Strelensky, he owned several timeshare weeks that have been registered in the name of the Coral Cove Trust. He said that he had not started selling any timeshare interests, but planned to do so fairly soon. He also said that he submitted documentation to TISA for approval. TISA informed the officials that they had not received any documents. Strelensky also said that he was buying stock for his club on a daily basis.

The following questions were asked and documents requested from Strelensky:

- A copy of Strelensky's fidelity fund certificate issued by the Estate Agents Board.
- A list of all his members/clients.
- Copies of the documents forwarded to TISA.
- A list of the weeks owned by him and the weeks registered in the name of the Trust.
- Copies of the last levy statements forwarded to his members.
- A copy of the contract between him and original complainant.
- Copies of all marketing material, such as advertisements, leaflets, talk sheets used for telephone marketing and presentation material.

His attorney undertook to provide copies of the requested items. It was explained that none of the requested items required any preparation and should be readily available in the office. Only some of the requested information was received.

Because of Strelensky's evasiveness the Committee resolved to summons him to one of its meetings. A copy of the summons was forwarded to his attorney.

The Committee met with Mr Strelensky and his attorney. Strelensky argued that his scheme is not the selling of timeshare, but that he has a unique concept. He did not give much detail about his concept, but only described it as a points club with a difference. Strelensky said that he was not currently selling any timeshare or related products.

The Committee resolved that Strelensky will have to conform to all the requirements as set out in the relevant legislation governing the time-sharing industry. Should Strelensky not be prepared to enter into a formal section 9 arrangement, the Committee would consider instituting an investigation in terms of section 8(1)(a) of the Act into Strelensky and his activities. In terms of section 9 of the Act, when the Committee has decided to undertake an investigation in terms of section 4(1)(c) or section 8(1)(a), it may at any time thereafter negotiate with any person or body with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of a unfair business practice which exists or may come into existence and which is the



subject to the investigation, either wholly or to such extent as, in the opinion of the Committee, it is not justified in the public interest. If the Committee has made such an arrangement, it reports the matter to the Minister. The arrangement could be published in the Government Gazette.

## 5.1 THE ARRANGEMENT

An arrangement was prepared but Strelensky could not be traced to sign the arrangement. The arrangement read as follows:

### ARRANGEMENT WITH T STRELENSKY IN TERMS OF SECTION 9 OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 71 OF 1988

**Background:** The activities of Strelensky were brought to the attention of the Committee by TISA. In a complaint received from Mr Kgogomo, he stated that he invested R45 000 with Strelensky and that he did not get any return on his money. He also did not have the use of the accommodation allegedly sold to him. Further investigation revealed that Strelensky endeavoured to operate a club, but that the business never actually traded. He did however not have the required provisions, as set out in the Consumer Code for the Timesharing Industry and the relevant legislation in place. He also did not have a fidelity fund certificate as required.

**Undertaking:** I, Tony Strelensky, am aware that the Consumer Affairs Committee (the Committee), on grounds of complaints received and a subsequent investigation by the officials of the Committee, is of the opinion that should I be involved in the sale of any timeshare or timeshare related products, or operate a club or a points scheme I must provide evidence to the Committee that I have abided by the following provisions:

1. All scheme documentation must comply with the relevant requirements of the Property Timeshare Control Act.
2. A property trust should be established to hold title to the accommodation to be included in the system from time to time. The deed of trust should clearly detail how accommodation is to be introduced into the trust and later again alienated by the trust. The deed of trust should also detail what is to transpire on termination of the system and dissolution of the Trust.
3. Independent trustees should ensure that the terms of the deed of trust are complying with and that the accommodation is properly vested in the trust.
4. A management association should be established in terms of the Act with a detailed constitution and scheme rules which set out the powers and duties of the association and how the association and the scheme are to be operated.
5. An elected executive committee should be responsible for the directing of the affairs of the association. The majority of members of the executive committee should be elected by the members of the association other than the timeshare developer.
6. A competent managing agent should be appointed to collect levies and pay the debts of the association and further to perform the secretarial and other statutory services required by the association. The managing agent should also be responsible for assisting the executive committee in performing their duties and in preparing the annual budgets for the association. These budgets will need to take account of the levies to be paid to underlying schemes and the necessity for creating a reserve fund for maintenance and upgrading where applicable. The

charging out and collection of levies should take into account the cash flow requirements of the association, especially with regard to the need to pay the levies timeously in the underlying schemes.

7. A competent reservations agent should be appointed to perform the function of co-ordinating the reservation requests of the members in terms of the scheme rules. The reservations agent should also be responsible for tracking the usage by each member and of the usage debits and credits to each member's usage/points account. The reservations agent should also regrade the accommodation on an annual basis to take account of the seasonal changes in demand for the accommodation. Such regrading should not dilute the rights of members and should be approved by the executive committee.
8. The members join the scheme by becoming members of the association through the acquisition of the right to an annual allocation of use rights (which may be measure in the form of points or credits) from the "Timeshare Developer" or Vendor.
9. The Vendor Company must be responsible for introducing accommodation into the system and paying for all accommodation so introduced. The Vendor Company is thus separate from the structure created for the members and the accommodation included in the system. The Vendor Company is a member of the system to the extent that he holds unsold rights in the system.
10. The financial viability of the scheme must be protected by ensuring that the terms of the Deed of Trust cover all financial aspects relating to the bonding of accommodation and the holding of the title in a secure manner. The scheme must be capable of standing alone from the Vendor in the event of the Vendor's collapse.
11. The System must be regularly audited to ensure that no more rights are alienated than are capable of being created by the accommodation in the trust.
12. Certificates of membership reflecting the rights of the member should be issued by the association under the hand of the managing agent on behalf of the association and under the hand of the trustee. A register of members should also be kept by the association together with details of the rights of the Member.
13. Scheme rules and regulations should be established which clearly determine how accommodation is to be introduced into the system as well as how members are making use of the accommodation included in the system.
14. All advertisements for your club or point system shall indicate that the timeshare being offered for sale is based on a pooling or points system and that the information required in terms of Regulation 3 of the Property Timesharing Control Act is available on application. This information must form part of the scheme documentation. Furthermore the advertisements must indicate the number of calendar years for which the timesharing interest endures.

I further do realize that should I operate a club or a points scheme, and not adhere to the above-mentioned provisions, my activities might, likely have the effect of (a) harming the relations between, myself and the complainants (the clients), (b) unreasonably prejudicing the clients, (c) deceiving the clients and (d) unfairly affecting the clients. In the opinion of the Committee I will thus be involved in unfair business practices as defined in the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act).

I am also aware that, in terms of section 9 of the Act, the Committee may at any time negotiate with any person, with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of an unfair business practice which exists or may come into existence and which is the subject of an investigation.

In view of the above, I Tony Strelensky, undertake not to, directly or indirectly,

- (a) administer or manage a scheme, that is, a scheme whereby -
  - (i) I, or any business in which I may have any interest, except a fee to sell or offer to sell or convert timeshare weeks into points.
  - (ii) I, or any business in which I may have any interest, confer or purport to confer on any person any right to or interest in the exclusive use or occupation, during determined or determinable periods during any year, of accommodation.

This arrangement will not apply should T Strelensky or any employee, agent or representative of a business in which he has an interest, in the course of business, sell or offer for sale any type of timeshare or pooling scheme to the public or receive funds from potential timeshares or timeshare rights pooling schemes from buyers while complying with the conditions of full membership or associate membership of the Time Share Institute of South Africa.

## 5.2 MORE COMPLAINTS RECEIVED

The Committee was contacted by a complainant who said that she was contacted by an agent that offered her an investment opportunity. She received money from her late husband's estate. The agent wanted her to meet Strelensky. Strelensky allegedly promised her that he would invest the R129 000 she got from her husband's estate, and would double the amount within nine months.

TISA contacted the Committee on 8 January 2001 stating that they had various other complaints. On enquiring from them they faxed three complaints to the Committee. The complainants invested a total of R47 000 in Strelensky's schemes. The complainants all seem to have been under the impression that Strelensky would administer the money on their behalf and that they would earn a return on their investments. From their letters it is not clear whether they understood that they had bought the right to utilize accommodation.

On 10 January 2001 TISA forwarded more information to the Committee. The documents were forwarded to TISA by NAKA Safari Lodge, a timeshare resort where Strelensky was doing some marketing. The documents indicated that Strelensky did operate the Coral Cove Club in 2000. An undated letter with a heading "Club Member Update" came to NAKA's attention on 13 April 2000. In this letter Strelensky advises his members that the Club has opened new offices and that bookings and related club membership enquiries can be directed to the new address.

In the letter it was said that "Cove Club" (presumably Coral Cove Club) had established a relationship with an international booking agent (Promotion Bureau International" PBI"). International bookings will be done through this agent. He further requested members to ensure that their bank details are correct as PBI would deposit rental income directly into their bank accounts. This statement strengthens the suspicion that

the club memberships were sold as an investment.

Strelensky also offered a network marketing scheme to the club members. It is called  
**"8" ONLY MARKETING.**

**EARN R196,830.00 COMMISSION IS A SHORT TIME  
AND CHANGE YOUR LIFE FOREVER**

**".... There has been a lot of discussion concerning the mechanisms of network marketing. Most work and people have become very wealthy with them"**

More information on the concept is not available. Strelensky could not be contacted to enquire about the investment scheme. When eventually Strelensky was requested to comment on the new complaint received by the Committee he said he would do so at the Committee's next meeting.

Strelensky was invited to attend the next meeting of the Committee but due to other commitments he did not arrive. He again reiterated that he is operating a legitimate business in which properties are bought and sold. In this letter dated 26 January 2001 he also gave an undertaking to co-operate with the Committee.

It has not been possible to contact Strelensky since this letter. Many attempts have been made to phone him. The land lines are disconnected. One of the numbers now belong to another business, the owner informed officials that many people have phoned to enquire about Holiday Club. Most of them reported that they had paid a deposit to the business and now cannot get hold of the owner.

A registered letter to inform Strelensky that the Committee resolved to investigate his business activities in terms of section 8(1)(a) of the Act was posted to Strelensky on 11 July 2001 to his last known address in Helderkruin. The letter has not been returned and no reply was received.

### **5.3 PUBLICATION OF THE NOTICE IN THE GOVERNMENT GAZETTE AND SUBSEQUENT EVENTS**

The following notice was published on 24 August 2001:

**In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of-**

**Holiday Concepts Marketing (Pty) Ltd, Holiday Concepts (Pty) Ltd, Coral Cove Holiday Club, Coral Cove Trust, Tony Strelensky and any employee, agent and/or representative of any of the aforementioned in respect of the activities of Holiday Concepts Marketing (Pty) Ltd, Holiday Concepts (Pty) Ltd, Coral Cove Holiday Club and Coral Cove Trust.**

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Committee did not receive any further complaints subsequent to the publication of the Notice in the Government Gazette. The Committee was however contacted by an inspector of the South African Police Services who informed them that Strelensky was arrested on several accounts of fraud and that bail was refused.

## **6. THE INVESTIGATION CONTINUES**

From the little information provided to the Committee it was established that the structures which were set in place according to the constitution of the club operated by Strelensky were non-operational. For example, the non registration of a property-owning trust. This resulted in point rights being sold to clients in circumstances where the weeks were still registered in the name of the owners of the weeks or Strelensky. This concerned the Committee because as sole shareholder Strelensky owned these weeks and not the property-owning trust as required by the Property Time Share Control Act.

Strelensky did not ensure that a management association was put in place. He administered Coral Cove Holiday Club as a management association, in spite of the sales agreements specifying that the Club could not be involved with the managing association. The structures that did exist, were cumbersome and ineffectual.

The members were at risk as to both the assets of Coral Cove Holiday Club (the non-registration of a property-owning trust) and the making of reservations at the resorts. It was also evident from the levy statements that the fees collected from Coral Cove's members, could not meet the levy commitments of the different resorts. The non-payment of these levies resulted in the accommodation rights of the units not being available to clients.

Although Strelensky did register a trust, this trust was not a property-owning trust, but resembled a "family" trust with Strelensky and two unknown persons as the only trustees. He had sole discretion over funds. The trust registered by him defeated the requirement of a property-owning trust.

Strelensky provided the Committee with two certificates representing shares in Utopia Holiday Resort a member of TISA. According to the manager of the resort these share certificates represented undeveloped portions of the resort. Accommodation units have not been build on these portions.

## **7. CONSIDERATION**

From the information available to the Committee, Strelensky operated a points club. He did not meet the provisions of the Property Timeshare Control Act, the Share-block Control Act, the Estate Agents Act or the provisions of the Consumer Code for the Time -Sharing Industry.

Strelensky did not register with the Estate Agents Board and therefor did not have a fidelity fund certificate. A person accepting money from the public for any immovable property transaction has to have a valid fidelity fund certificate issued by the Estate Agents Board.

Strelensky did not comply with any of the provisions regarding the operation of a club or trust scheme (see section 4) in terms of the Consumer Code for the Time-sharing Industry nor could he provide evidence that he had kept to any of the provisions applicable to the industry.

Timeshare rights are often marketed as so-called investments, the claim being made that timeshare transactions serve to contain costs which might otherwise have been subject to inflation. The Consumer Code for Advertising states that advertisements for a timeshare interest should not present timesharing as an investment for financial and capital gain, but rather as an investment in affordable holidays.

The complainants alleged that they entered into agreements with Strelensky on the basis that it was purporting to be a good investment.

## **8. CONCLUSION AND RECOMMENDATION**

The contracts entered into by consumers with Strelensky and his businesses were highly prejudicial to consumers. Strelensky had no systems in place to fulfill his obligations to manage leisure investments from members of the public. No grounds justifying the practices in the public interest have been found.

The Committee finds that the business practices of Strelensky and Coral Cove constitute unfair business practices. It has been shown that the party were not able to

manage a pooling system, a club or any timeshare activities. If the parties were to be allowed to operate a similar scheme, it is likely that an unsuspecting public would be exposed to further losses.

It is accordingly recommended that the Minister -

- (a) under section 12(1)(b) of the Act declares unlawful the business practice whereby the parties Holiday Concepts Marketing (Pty) Ltd and Anthony Vernon Strelensky trading as Coral Cove Club, Coral Cove Trust and Holiday Concepts are involved in a timeshare scheme that -
  - (i) the parties, or any business in which the parties have any interest, acquire or offer to acquire, either on their own or its behalf or on behalf of a third party, any right to or interest in the exclusive use or occupation, during determined or determinable periods during any year, of accommodation; and
  - (ii) the parties, or any business in which the parties have any interest, confer or purport to confer on any person any right to or interest in the exclusive use or occupation, during determined or determinable periods during any year, of accommodation;
- (b) under section 12 (1)(c) of the Act direct the parties to refrain from the application or continuation of any business practice as described in paragraph (a) above, and to cease to have any interest in a business or type of business which applies to such a business practice or to derive any income therefrom and to refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying such a business practice.



**PROF T A WOKER**

**VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE**

20/05/2004