

**STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL**

**IN THE MATTER OF LEMON
TREE INN LLC; SIDNEY S. KALMANS
AND RONALD S. FREEDMAN**

CASE NO: L 04-3-1124

ASSURANCE OF VOLUNTARY COMPLIANCE

PURSUANT to the provisions of Chapter 501, Part II, and Chapter 501.160, Florida Statutes, the **OFFICE OF THE ATTORNEY GENERAL** caused an inquiry to be made into the practices of the Lemon Tree Inn LLC. Mr. Sidney S. Kalmans and Ronald S. Freedman, managers of Lemon Tree Inn LLC, join in this Assurance of Voluntary Compliance (AVC) and, along with Lemon Tree Inn LLC (hereinafter jointly referred to as the Lemon Tree Respondents) agree to be bound its terms and conditions.

The Lemon Tree Respondents are prepared to enter into this Assurance of Voluntary Compliance (AVC), without any admission that they violated the law and for the purpose of resolution of this matter only, and the Deputy Attorney General, by and through the undersigned Economic Crimes Bureau Chief, being in agreement, does in this matter accept this Assurance of Voluntary Compliance in termination of this investigation, pursuant to Section 501.207(6), Florida Statutes and by virtue of the authority vested in the Office of the Attorney General by said statute, the following is agreed:

Lemon Tree Inn LLC, owns and operates the Lemon Tree Inn, located at 250 Ninth Street South, Naples, FL 34102.

2. The Lemon Tree Inn rents rooms for lodging to the general public for varying seasonal rates.

3. Section 501.160, Florida Statutes (2003), prohibits unconscionable prices in the rental or sale of essential commodities during a declared state of emergency and Florida's

Deceptive and Unfair Trade Practices Act (hereinafter referred to “FDUTPA”), Chapter 501, Part II, Florida Statutes (2003) prohibits unfair and deceptive trade practices in the sale of goods or services.

4. At all times material hereto, Lemon Tree Inn LLC sold or offered to sell essential commodities, to wit, lodging, in the city of Naples, Collier County, Florida.

5. On August 10, 2004, the Governor of the State of Florida, Jeb Bush, signed Executive Order 04-182 (hereinafter, the “Executive Order,”) in which the Governor declared a State of Emergency for various regions throughout the State of Florida, including communities located in southern and southwestern portions of the State, in connection with Tropical Storm Bonnie and Hurricane Charley. This declared State of Emergency has been extended by executive order since that date.

6. On August 13, 2004, Hurricane Charley struck Florida with winds exceeding 145 miles per hour. It crossed Florida from coast to coast leaving devastation in its wake. Homes were destroyed. People were killed. Hospitals and nursing homes were critically damaged. Hundreds of thousands of citizens were evacuated. Over one million people were without electricity or water. On or about September 5, 2004, Hurricane Frances struck the eastern coast of Florida causing similar damage and hardship.

7. It is alleged that, during the above referenced state of emergency, Lemon Tree Inn LLC has engaged in unconscionable pricing practices within the area for which the state of emergency was declared.

8. Illustrative of said practices are the following facts:

a) During the week following the landfall of Hurricane Charley, the average guest rate at the Lemon Tree Inn was approximately 32.6% higher than that charged by the Inn in the thirty days prior to the storm.

b) During the second week following the landfall of Hurricane Charley, the average guest rate was approximately 21.3% higher than that charged by the Inn in the thirty days prior to the storm.

c) During the third week following the landfall of Hurricane Charley, the average guest rate was approximately 6.1% higher than that charged by the Inn in the thirty days prior to the storm.

9. The Lemon Tree Respondents agree that they will refrain from the following acts and practices:

a) Violating the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act (2003) (hereinafter "FDUTPA");

b) Price gouging during a declared state of emergency, as that term is defined in Section 501.160 (3), Florida Statutes (2003);

c) i) Failing to honor a legitimately advertised or publicized room rates, regardless of whether the advertisement appears on a billboard, coupon, AAA guidebook, Hotel.com or other authorized source;

ii) failing to honor a telephonically quoted room rate; and,

iii) Imposing terms and conditions for receiving advertised or quoted room rates, including but not limited to occupancy levels or limited availability of rooms, unless those terms and conditions are clearly and conspicuously disclosed in the advertisement or quote. The provisions of subsection 9(c) would not apply in instances where the honoring of a reservation was impossible due to destruction or damage to the premises or mandatory civil evacuation orders.

10. The Attorney General has not approved any of Lemon Tree Inn LLC's' past, current or proposed marketing practices and no portion of this AVC shall be construed as such approval.

11 Within thirty (30) days of the execution of this AVC, the Lemon Tree Inn LLC shall issue refunds to their guests in the following manner:

a) For any guest of the Lemon Tree Inn charged a basic room rate of \$60 per night or above for the period of August 13, 2004 through and including August 20, 2004, said guest shall be refunded 32.6 % of their total bill for room and applicable taxes thereon, excluding

previously disclosed charges for additional amenities, if any, such as telephone and taxes attributable thereto.

b) For any guest of the Lemon Tree Inn charged a basic room rate of \$60 per night or above for the period of August 21, 2004 through and including August 27, 2004, said guest shall be refunded 21.3% of their total bill for room and applicable taxes thereon, excluding previously disclosed charges for additional amenities, if any, such as telephone and taxes attributable thereto.

c) For any guest of the Lemon Tree Inn charged a basic room rate of \$60 per night or above for the period of August 28, 2004 through and including September 3, 2004, said guest shall be refunded 6.1% of their total bill for room and applicable taxes thereon, excluding previously disclosed charges for additional amenities, if any, such as telephone and taxes attributable thereto.

12. The Lemon Tree Respondents shall, within forty (40) days of the execution of this AVC, provide the Office of the Attorney General with proof of the mailings of said refunds to the addresses provided by the hotel guests. The Lemon Tree Respondents shall use (and document) their best efforts to ascertain the current location of any guest whose check has been returned as undeliverable and shall attempt to forward said refund to the guest's new address. In the event that any guest cannot be located, the Lemon Tree Respondents shall hold these checks and provide a summary of same to the Office of the Attorney General within ninety (90) days of the present AVC. The total amount of the unpaid restitution shall then be delivered to the Office of the Attorney General and shall be donated to the "Florida Hurricane Relief Fund." The Lemon Tree Respondents shall provide to the Office of the Attorney General any documentation requested in order to ensure compliance with this AVC.

13. Upon their partial execution of this AVC, The Lemon Tree Respondents shall deliver to South Florida Economic Crimes Bureau Chief Robert R. Julian a check totaling ten thousand dollars, made payable to the Legal Affairs Revolving Trust Fund for reasonable costs and attorneys fees related to this investigation and sent via first class mail or federal express to

Robert R. Julian, Economic Crimes Division, Office of the Attorney General, 110 SE 6th Street, Tenth Floor, Fort Lauderdale, Florida, 33301. The Deputy Attorney General has the final authority to approve or disapprove the entry of the AVC. Failure of the Deputy Attorney General or his designee to formally approve this agreement shall render it void and any monies transferred to the Office of the Attorney General shall be immediately returned.

14. In consideration for the fulfillment of the various injunctive and monetary obligations set forth above, no penalties or additional monetary obligations are to be imposed under this AVC. However, the Attorney General reserves the right to seek Chapter 501 penalties for any future violation(s) of the injunctive terms contained within this agreement. Additionally, the Attorney General reserves the right to seek attorney's fees and costs upon default, as defined herein, or upon any future noncompliance.

15. This Assurance of Voluntary Compliance shall become effective upon its execution by the parties. The receipt or deposit by the Office of the Attorney General of any monies pursuant to the Assurance of Voluntary Compliance does not constitute acceptance by the Deputy Attorney General or Senior Attorney, respectively, and any monies received will be returned if this Assurance of Voluntary Compliance is not executed by the Office.


16. No changes in the corporate name or structure of Lemon Tree Inn LLC shall be made in an attempt to avoid the terms and conditions imposed by this agreement. Should Lemon Tree Inn LLC fail to provide the financial restitution and attorneys fees and costs required under this AVC, Sidney S. Kalmans and Ronald S. Freedman shall be jointly and individually liable for the payment of these monies.

17. The terms and conditions of this AVC shall be made known to any and all present and future officers or managers of the Lemon Tree Inn and Lemon Tree Inn LLC.

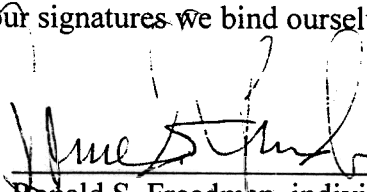
18. This AVC voids and supersedes any previous agreements between the parties.

IN WITNESS WHEREOF, the Lemon Tree Respondents caused this Assurance of Voluntary Compliance to be executed by Sidney S. Kalmans and Ronald S. Freedman, this 30th day of November, 2004.

By our signatures, we hereby affirm that we are acting in our capacity and within our authority over Lemon Tree Inn LLC and that we have full authority to bind Lemon Tree Inn LLC to the terms and conditions of this AVC. By our signatures we bind ourselves and the limited liability company to this agreement.

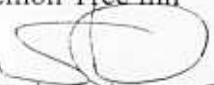


Sidney S. Kalmans, individually and as
Manager of LEMON TREE INN, LLC
d/b/a Lemon Tree Inn



Ronald S. Freedman, individually and as
Manager of LEMON TREE INN, LLC
d/b/a Lemon Tree Inn

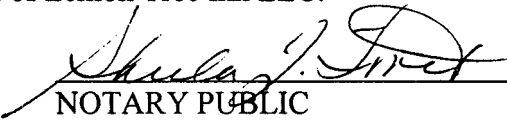
LEMON TREE INN, LLC
d/b/a Lemon Tree Inn

By: 
Title: Manager Lemon Tree Inn LLC

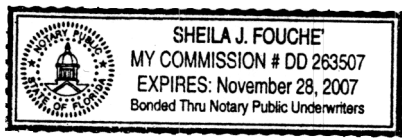
STATE OF FLORIDA
COUNTY OF COLLIER


IN WITNESS WHEREOF, the Respondents have caused this AVC to be executed as a true act and deed, this 30th day of NOVEMBER, 2004.

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, this 30th day of NOVEMBER, 2004, Ronald S. Freedman, who is personally known to me or has produced Identification, and Sidney S. Kalmans, who is personally known to me or has produced Identification, personally appeared and acknowledged before me that they executed the foregoing instrument for the purposes therein stated, on their own behalf and on behalf of Lemon Tree Inn LLC.

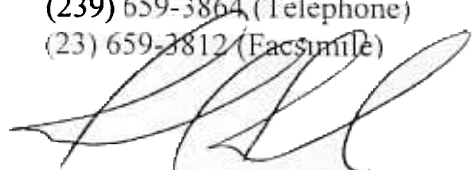


NOTARY PUBLIC
SHEILA J. FOUCHE
(print, type or stamp commissioned name of Notary Public)



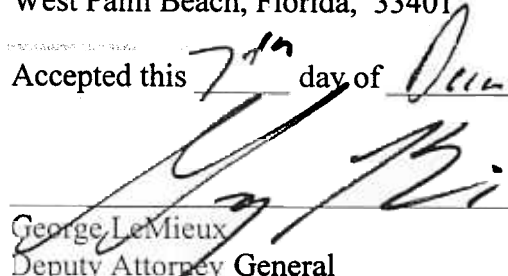


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Robert R. Julian
Bureau Chief, Economic Crimes
South Florida Region
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Accepted this 7th day of October, 2004.



George LeMieux
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