HAVE I GOT A DEAL FOR YOU!

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This case study examines high-pressure and often unethical sales practices. Students will receive instruction in common and contract law, major ethics theories, and an ethical decision-making framework. Using a legal case involving timeshare sales (Overton v. WESTGATE RESORTS, LTD., LP., 2014), students will examine the sales practices in one specific instance and discuss the legal ramifications. Reviewing the principles of Utilitarian and Rights ethical theories, students will apply an ethical decision-making process to develop a course of action which upholds ethical principles. The case study is intended for use in undergraduate Business Ethics, Business Law, and Auditing courses.

HAVE I GOT A DEAL FOR YOU!

It starts with a postcard saying, "You've been selected to receive a fantastic gift." Then the message goes on to say that you've won a free dinner or hotel stay, which many people will quickly recognize as a timeshare sales gimmick. Yes, you will receive your gift, and you may be genuinely interested in a timeshare purchase; just prepare yourself for a high-pressure sales pitch and remember to read the fine print.

WESTGATE RESORTS, LTD.[1]

Founded in 1970 by David A. Siegel, Central Florida Investments, Inc (CFI) is now the largest privately-held corporation in the Central Florida Area. From a small office in his garage, Siegel began a real estate development firm, growing to employ over 14,000 people in eleven states. Siegel's successful run "began in the 1970s when he purchased a prime piece of real estate that later developed into the largest single-site of vacation ownership in the world - Westgate Vacation Villas". Since 1982, Westgate Resorts' unprecedented growth is averaging 25% annually, far exceeding the industry average. In 2008, Westgate reached $1 billion in sales and

[1] Material for this section obtained from History of Westgate Resorts, 2017

earned its place as the largest private timeshare company in the world. As a pioneer in the tourism industry, Mr. Siegel spent the past thirty years building the CFI/Westgate Resorts empire, which includes timeshare, real estate, construction, hotel and apartment management, travel services, telecommunications, citrus, insurance, transportation, retail, and much more. Mr. Siegel has received numerous awards, including Entrepreneur of the Year for construction and real estate in Central Florida and runner-up for Entrepreneur of the Year national competition.

THE TIMESHARE INDUSTRY[2]

The timeshare industry began in the mountains of Europe in the 1960s, first with Hapimag in Switzerland and followed shortly thereafter with the SuperDevoluy in the French Alps. The Post-WWII economic boom provided the means for large condominium developments in select tourist destinations. Timeshares in the U.S. started in Hawaii in 1965, quickly moving to the mainland with properties in California and Florida opening in the mid-1970s. The up-swing in economic activity, coupled with aggressive developers, meant that banks would reach their mortgage lending limit. As in many cases, necessity stimulates innovation. Developers with properties that were built and ready to be sold were without financing for buyers. Unable to sell the properties via conventional means, developers began holding small mortgages for buyers and before long timeshare, as we know it today, was born. Timeshare grew quickly; however, there were no regulations, which made it ripe for all types of unethical behavior. Eventually, several timeshare companies and proprietors joined forces to form ALDA / ARDA, a self-regulating industry association. By the mid-1970s two exchange companies were in operation, helping vacationers buy, sell, and swap timeshares. In 1983 the Model Timeshare Act was enacted, followed by state statutes, and an industry code of ethics.

Industry surveys conducted by Ernest & Young in 2016 concluded that there are 1,547 timeshare properties, with a total of 192,420 units, in the US. Sales hit $8.6 billion in 2015, with an average annual sales volume increase of 7%. This industry also provides almost a half a million jobs (ARDA, 2016). About 6.9% of US households own a timeshare and the percentage increases within the different income brackets. For example, in US households making $100,000 or more per year the percentage of timeshare ownership goes up to 10.9% (ARDA, 2016).

Timeshare resorts tend to offer a long list of amenities that would compare with many high-end hotels. This strategy makes for a more affordable comprehensive vacation at an equal or lower price than high-end hotel prices. One of the biggest challenges facing this business is the sales practice. They are not known for

[2] Material for this section obtained from Johnson, 2017 and ARDA 40th FINAL, 2010

practicing the most ethical sales practices. Thus, consumers have taken legal action and found justice through the legal system. The following case, as detailed in a Tennessee Appellate Court decision (Overton v. WESTGATE RESORTS, LTD., LP., 2014) and local news reports (Brinkmann, 2015; Satterfield, 2015), examines one couple's timeshare purchase experience.

IN SEARCH OF THE PERFECT VACATION SPOT

Nathan and Patricia Overton of Dickson, Tennessee were looking for a nice place to vacation with the family and Gatlinburg, Tennessee seemed like the perfect spot. Nestled in the Smoky Mountains, Gatlinburg afforded beautiful views and plenty of activities. The Overtons decided to purchase a cabin or timeshare and visited the area in July 2011 to search for adequate accommodations for the extended family. Mrs. Overton was taking in the sights when she noticed the Westgate Resorts booth – a timeshare would certainly meet the need and it was only a ninety-minute presentation.

Mr. and Mrs. Overton decided to attend the presentation at the Westgate Smoky Mountain Resort and met with Robert Justice, who provided resort information and led a tour of different units. Unit 458 was the perfect size for the family, and the Overtons decided they would like to discuss a purchase. They were then joined by the sales manager, Raymond Veverka, to discuss prices. While the purchase price of $39,280 for one week per year seemed high, Robert and Raymond assured the Overtons that they would have use of Unit 458 for the same week in December every year and the right to book “Owners’ Nights” at any Westgate Resort for $49 to $69 per night. Additionally, Robert and Raymond would each refund a part of their commissions, totaling $1,500, plus purchase a foosball table for use during the Overton family vacations. Although they spent nearly eight hours at the resort and did not sign the final purchase documents until 11:00 p.m., Mr. and Mrs. Overton left the resort with copies of the paperwork and CD-ROM discs containing disclosures, feeling confident that the timeshare would be a place for many happy vacations.

TROUBLE IN PARADISE

While planning, their inaugural timeshare stay in December 2011, the Overtons contacted Mr. Veverka, who assured them that the reservation for Unit 458 was complete and provided a customer service phone number for future inquiries. A call to make the final confirmation revealed the first sign of trouble. The customer service representative advised that timeshare units were assigned only a few days prior to arrival and the Overtons were not guaranteed the use of Unit 458. Now what were they to do? They were promised that unit and it was the perfect size for the extended family.

After several more phone calls and conversations with multiple representatives, the Overtons learned that not only were they not guaranteed their preferred unit for 2011, several other items promised by Mr. Justice and Mr. Veverka were also not in place. The timeshare purchase was for a “floating” week so the resort could not guarantee availability of the same week each year, and the Owners’ Nights were not even listed in the purchase agreement. This was most certainly NOT what the Overtons thought they signed up for and it simply would not work for their family vacations.

CUE THE LAWYERS

Disillusioned and frustrated, the Overtons contacted an attorney, who reviewed the purchase documents and CD-ROM discs that were provided at closing. The discs, which the Overtons had not yet tried to open, contained outdated disclosures from 2006 with several illegible pages. Additionally, the sales staff failed to provide a current copy of Westgate Resorts, LLC public offering statement (POS) as required by Tennessee law; therefore, the Overtons had grounds to rescind the contract.

Mr. and Mrs. Overton provided Westgate with a written request to rescind their contract in October 2011. Westgate denied the request, leaving the Overtons to file a lawsuit in the Tennessee courts, where the case would not go to trial until June 2013. During the trial, it was revealed that Westgate failed to provide an accurate POS and did not include the promised foosball table or Owners’ Nights in the disclosures. Testimony also revealed that Westgate knew that the POS on the CD-ROM discs were outdated and failed to provide paper copies of the current disclosures.

THE COURT RULES

The court ruled against Westgate, finding that the company intentionally withheld the POS and refused contract rescission. Additionally, Westgate was found to have willfully violated the Tennessee Time-share Act by failing to disclose the promised gifts. The deceptive practices also violated the Tennessee Consumer Protection Act and engaged in common law fraud. Specifically related to the Owners’ Nights, “the court specifically found that Westgate trained its salespersons to make such a promise and know that its salespersons were representing that such a program existed even though the written documents did not mention it” (Overton v. WESTGATE RESORTS, LTD., LP., 2014, p. 4).

Westgate was ordered to refund the purchase money of $39,280 and pay punitive damages, statutory damages, and attorney’s fees totaling $736,280. Westgate’s attorneys argued that the punitive damages were excessive; however, the court ruled that due to the intentional misrepresentations, reprehensible conduct, and willful violation of Tennessee law, the maximum penalty was warranted. As the purpose of punitive damages is to discourage the offender from repeating the conduct, the court reviewed Westgate's financial condition, noting the net income and total assets of the company. The court memorandum stated, "How are you going to deter somebody with that kind of income? It takes more than a slap on the wrist. What is a lot of money to you and me is very little money to Westgate?" (Overton v. WESTGATE RESORTS, LTD., LP., 2014, p. 15). The appellate court later upheld the trial court's ruling, yet it reduced the punitive damages by $100,000 to comply with the statutory cap.

WHAT'S A TIMESHARE COMPANY TO DO?

Westgate Resorts currently operates 28 properties with 13,500 units (About Westgate Resorts, 2017) – that's 702,000 weeks per year to fill; talk about sales pressure! High-pressure sales tactics and promotional gifts were effective in the past, but times are changing.

While the Overton's may have brought the most high-profile and costly case against Westgate Resorts, it certainly isn't the only complaint of high-pressure and potentially deceptive sales practices. In 2015, the Overtons' attorney had two additional cases against Westgate (Brinkmann, 2015). Also in 2015, the Consumer Financial Protection Bureau launched an investigation into Westgate's sales practices, which has not yet been completed (2015-MISC-Westgate Resorts, LTD-0001, 2015). In addition to the negative publicity, defense against lawsuits and compliance with enforcement actions are time-consuming, costly, and distract personnel from their primary function of selling timeshare units. Surely, there must be a better way to do business. How would you advise Westgate Resorts to implement ethical sales practices?

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