

EMPIRE RESORTS INC
Form 4
March 11, 2005

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
BERMAN ROBERT ALAN

(Last) (First) (Middle)
C/O MONTICELLO
RACEWAY, ROUTE 17B
(Street)

MONTICELLO, NY 12701

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
EMPIRE RESORTS INC [NYNY]

3. Date of Earliest Transaction
(Month/Day/Year)
03/07/2005

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)
Chief Executive Officer

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Reported (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D)	Transaction(s) Price		
			Code	V	Amount		

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any	4. Transaction Code (Instr. 8)	5. Number of	6. Date Exercisable and Expiration Date (Month/Day/Year)
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Price of Derivative Security	(Month/Day/Year)	Code	V	Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		Date Exercisable	Expiration Date
				(A)	(D)		
Forward Contract (right/obligation to sell)	\$ 0 03/07/2005	J		1 (1) (2) (3) (4) (5) (6)		(1)(2)(3)(4)(5)(6)	(1)(2)(3)(4)(5)(6)
Forward Contract (right/obligation to sell)	\$ 0 03/07/2005	J		1 (1) (2) (3) (4) (5) (6)		(1)(2)(3)(4)(5)(6)	(1)(2)(3)(4)(5)(6)

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
BERMAN ROBERT ALAN C/O MONTICELLO RACEWAY ROUTE 17B MONTICELLO, NY 12701	X	X	Chief Executive Officer	

Signatures

/s/ Berman,
Robert A. 03/11/2005

**Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
 - ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) On March 7, 2005, Robert A. Berman entered into a pre-paid variable forward sale contract (the "Contract") with Bear Stearns & Co., Inc ("Bear"). Pursuant to the Contract, Robert A. Berman pledged 260,700 shares of common stock of Empire Resorts, Inc., of which 99,098 shares are held directly by Robert A. Berman and 161,602 shares are held directly by Avon Road Partners, LP, with respect to which Mr. Berman is its general partner, to secure his obligation to deliver a maximum of 260,700 shares of common stock on or about March 7, 2009 (the "Settlement Date"). The 260,700 shares represent approximately 6% of the number of shares of common stock of Empire Resorts, Inc. beneficially held by Robert A. Berman. Thus, Mr. Berman will retain 94% of

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his prior pecuniary interest of Empire Resorts, Inc.

- (2) Prior to the Settlement Date, Robert A. Berman retains voting control over the 260,700 shares subject to the Contract. Under the Contract, Robert A. Berman and Avon Road Partners, LP will receive on or about March 13, 2005 approximately \$2,056,741, in proportion to each of their respective holdings, representing approximately 87% of the value of the 260,700 shares of common stock on March 11, 2005. Robert A. Berman may settle this Contract by a cash payment to Bear equal to the product of 260,700 and the market price of the common stock on the Settlement Date (the "Settlement Price") or by the delivery of shares of common stock on the Settlement Date as provided below.
- (3) If the Settlement Price is at or above \$12.69 per share (the "Ceiling Price"), Mr. Berman would be obligated to deliver on the Settlement Date that number of shares equal to the product of (a) 260,700 and (b) the ratio that is obtained by dividing the sum (x) \$10.151 per share (the "Floor Price") and (y) the difference between the Settlement Price and the Ceiling Price, by the Settlement Price.
- (4) If the Settlement Price is between the Floor Price and the Ceiling Price, Mr. Berman would be obligated to deliver on the Settlement Date that number of shares equal to the product of (a) 260,700 and (b) the ratio that is obtained by dividing the Floor Price by the Settlement Price.
- (5) If the Settlement Price is at or below the Floor Price, Mr. Berman would be obligated to deliver 260,700 shares on the Settlement Date.
- (6) The number of shares of common stock to be delivered by Mr. Berman is also subject to adjustment in the case of certain antidilutive and extraordinary events and the payment of dividends on the common stock.
- (7) Robert A. Berman is the general partner of Avon Road Partners, LP.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.

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