



**COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE ACTION NO. 2022-AH-0012**

DEPARTMENT OF FINANCIAL INSTITUTIONS **COMPLAINANT**

v. EMERGENCY ORDER TO CEASE AND DESIST

**SAND VEGAS CASINO CLUB,
MARTIN SCHWARZBERGER,
and FINN RUBEN WARNKE** **RESPONDENTS**

The Department of Financial Institutions (hereinafter referenced as the “Department”), pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (KAR) 10:225, hereby enters this **Emergency Order to Cease and Desist** against Sand Vegas Casino Club, Martin Schwarzberger, and Finn Ruben Warnke (hereinafter referenced collectively as “Respondents” or “Sand Vegas”). In support thereof, the Department states as follows:

PARTIES

1. The Department of Financial Institutions is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Sand Vegas Casino Club is a company consisting of a team that includes four people: Schwarzberger, Warnke, an unidentified Community Manager, and an unidentified Social Media Manager. Sand Vegas Casino Club is not affiliated with the similarly named Las Vegas Sands Corporation, an established developer and operator of resorts and casinos.

3. Martin Schwarzberger is a co-founder of Sand Vegas Casino Club and responsible for its marketing and relationships.

4. Finn Ruben Warnke is a co-founder of Sand Vegas Casino Club and serves as its Head of Operations.

5. Due to the nature of Sand Vegas Casino Club's online business model and the international status of its founders and staff, Respondents do not have a readily ascertainable principal office or agent for service of process. Upon information and belief, the following four addresses are the last known addresses by which the Department may serve Respondents:

a. Riga Fereou Street 47, 6013 Larnaca, Cyprus. This is the address for MS Airidu LTD, a company owned by Martin Schwarzberger.

b. Georgiou Seferis, 11, Majestic Gardens Pl B2, Apartment/Office 105, Tersefanou, 7562, Larnaca, Cyprus. This is the address for Feruba LTD, a company whose sole principal and secretary is Finn Ruben Warnke.

c. 4600 East Washington Street, Suite 305, Phoenix, Arizona 85034. This is the address for Namecheap, Inc., the registrar of the Sand Vegas Casino Club website.

d. Kalkofnsvegur 2, Reykjavik, Iceland. This is the address for Namecheap, Inc.'s registrant, administrative contact, and technical contact.

STATEMENT OF FACTS

6. On April 8, 2022, the Department received communications from the Alabama Securities Commission regarding Sand Vegas' securities-related activities. Shortly thereafter, the Texas State Securities Board communicated with the Department regarding information it obtained during its own investigation. Pursuant to the information provided by those regulatory entities, the Department investigated the Respondents' activities, determining that the facts and circumstances described herein have occurred.

7. Sand Vegas is developing a casino in the metaverse, a virtual world focused on social connections, interactivity, commerce, entertainment, and business. Metaverses typically incorporate technological innovations such as blockchain, augmented reality (“AR”), virtual reality (“VR”), digital assets, and non-fungible tokens (“NFTs”). Metaverses have also popularized a virtual real estate industry, where purchasers buy plots of “virtual land” in a particular metaverse, which allows businesses to construct spaces to conduct activities in the metaverse.

8. On or about January 4, 2022, Sand Vegas purchased virtual land for its metaverse casino in the Sandbox metaverse, a metaverse governed by a decentralized autonomous organization (“DAO”). In the Sandbox metaverse, there is no centralized leadership; instead, members of the Sandbox metaverse may participate in governing decisions of that metaverse by acquiring “SSAND” cryptocurrency tokens.

9. Sand Vegas claims to be currently developing a metaverse casino in the Sandbox metaverse with plans to develop more casinos in that metaverse and expanding to other metaverses. The metaverse casino operates by customers utilizing metaverse avatars. These avatars can visit the virtual location, participate in weekly tournaments, gamble on virtual horse racing, use virtual slot machines, and play virtual games such as blackjack, poker, baccarat, and “Wheel of Sand”, a game that resembles Wheel of Fortune.

10. Sand Vegas refers to this initial metaverse casino that it is developing as the “Bellagio”, sharing its name with a famous resort, luxury hotel, and casino located on the Las Vegas Strip of Paradise, Nevada. Unlike the real-world Bellagio, Sand Vegas’ metaverse casino is not owned or affiliated with the Blackstone Group or operated by MGM Resorts International.

11. On April 12, 2022, Sand Vegas also launched an online casino, which Sand Vegas refers to as the web 2.0 casino. The web 2.0 casino will operate concurrently with the metaverse casino. Sand Vegas has taken steps to utilize the web 2.0 casino as a crypto casino that allows gamblers to use cryptocurrencies as wagers.

12. Sand Vegas funds the development and administration of its metaverse and online casinos through the sale NFTs to the public. Owners of Sand Vegas NFTs are entitled to various benefits, including a pro rata share of profits generated by the Sand Vegas casinos. This arrangement is detailed in the description section for each of the NFTs, on the webpage where the prospective purchaser would place a bid to own that particular NFT.

13. NFTs are tokens representing ownership of a unique item, such as a digital work of art, and are secured by the Ethereum blockchain, a decentralized peer-to-peer network platform. The Ethereum blockchain can run smart contracts, which are programs that automatically execute a specific transaction if certain conditions are met. In the case of Sand Vegas NFTs, the sale of the NFT can trigger a smart contract whereby the NFT's owner will receive future distributions of Sand Vegas' business profits.

14. Sand Vegas currently offers two notable kinds of NFT: Gambler NFTs and Golden Gambler NFTs. Owners of Gambler NFTs become part owners of all metaverse casinos in the "multiverse" (a collective term for all metaverses) and a part owner in the web 2.0 casino. These part owners share 50 percent of the profits generated from all services inside the metaverse casinos and 20 percent of the profits generated from the web 2.0 casino. Owners of Golden Gambler NFTs become part owners of the web 2.0 casino only, sharing 30 percent of the web 2.0 casino's profit but not the ownership and profits of the metaverse casinos.

15. As of the date of this order, more than 12,000 NFTs have been offered, including 11,111 Gambler NFTs and 1,111 Golden Gambler NFTs. Sand Vegas has directed purchasers to mint and buy both Gambler and Golden Gambler NFTs through Ozone Networks, Inc. (dba “OpenSea”), an online marketplace for discovering, buying and selling NFTs. OpenSea permits the payment of royalties, referred to as “creator earnings”, to Sand Vegas Casino Club for sales of both kinds of NFT.

16. Sand Vegas’ business, NFT offerings through OpenSea, and Sand Vegas’ statements about its business and NFTs are freely available online and accessible to citizens of the Commonwealth of Kentucky.

17. Sand Vegas speculates that the profits from an individual Sand Vegas NFT may be worth as much as \$6,750 per month or \$81,000 per year. Sand Vegas represents that its marketing campaign for the web 2.0 casino will increase traffic and interest in its casinos and will “definitely” cause the price of NFTs to increase, causing the floor price of NFTs to “go to the moon” and “at least triple or quadruple” in value. As of April 9, 2022, OpenSea listed Gambler NFTs at an approximate value between 0.23 ETH (\$744.38) and 777.77 ETH (\$2,517,190.39) and Golden Gambler NFTs at an approximate value between 2.13 ETH (\$6,893.57) and 169 ETH (\$546,954.98).

18. Sand Vegas claims that it is working with various third parties to develop more NFTs and metaverse casinos. For developing NFTs, Sand Vegas claims to have retained an unidentified artist, which Sand Vegas purports as an “Italian Designer”. Sand Vegas has not yet identified the artist as of the date of this Order. For developing the virtual casinos, Sand Vegas claims that it has retained various developers and software engineers. The purported “head of [Sand Vegas’] builder

team” has only been identified as “NFTDrafter7110” and is the only developer or engineer identified as of the date of this Order.

19. Sand Vegas has already taken steps to expand its metaverse casino to the multiverse. Sand Vegas has stated that it already purchased virtual land in Decentraland, another metaverse that is governed by DAO, with plans to develop one or more virtual casinos there. Sand Vegas has also stated that it purchased virtual land in Infinity Void and plans to purchase virtual land in NFT Worlds, with the purpose of developing casinos in both of those decentralized virtual worlds.

20. Sand Vegas has stated that metaverse casinos in the Sandbox metaverse, the metaverse casinos in Decentraland, and the web 2.0 casino will each generate between \$1,000,000 and \$20,000,000 in profits per month for a total ranging from \$3,000,000 to \$60,000,000 in aggregate profits per month. Accordingly, purchasers of the Gambler NFTs expect to receive between \$102 per NFT per month and \$2040 per NFT per month.

21. Sand Vegas represents the web 2.0 casino will generate between \$2,000,000 and \$25,000,000 in profits per month. Accordingly, purchasers of Golden Gambler NFTs expect to receive between \$540 and \$6750 per NFT per month.

22. Sand Vegas is advising purchasers that it is taking steps to satisfy all regulatory and legal requirements associated with the operation of metaverse casinos. It is also advising clients that it will obtain necessary licensure, will comply with KYC requirements, and will ensure minors do not gamble in the metaverse casinos.

23. Sand Vegas is also representing that it will comply with laws regulating the sale of securities because securities laws do not currently regulate NFTs as an asset class. Sand Vegas further advised purchasers that it will take steps to ensure the NFTs are not regulated by securities

laws, claiming that it can remove the NFTs from regulation by adding illusory terms to the NFTs and using different terminology when describing the payment of profits to owners of NFTs.

STATUTORY AUTHORITY

24. KRS 292.310(15) defines “Person” as:

[A]n individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government[.]

25. KRS 292.310(17) defines “Sale” or “sell” as including:

[E]very contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. “Offer” or “offer to sell” includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security[.]

26. KRS 292.310(19) defines a “security”, in pertinent part, as:

[A]ny note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a “security[.]”

27. KRS 292.340 states,

It is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.

28. KRS 292.470 states, in pertinent part,

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or

order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. Sand Vegas plans on developing metaverse casinos in the multiverse, funding its business venture through the sale of NFTs.

30. Sand Vegas' Gambler NFTs and Golden Gambler NFTs are "securities" under 292.310(19) because the NFTs entitle purchasers to part ownership and a pro rata share of profits generated by Sand Vegas casinos' services. Furthermore, OpenSea, the online marketplace offering the sale and trade of these NFTs, permits the payment of royalties to Sand Vegas Casino, which would allow NFT purchasers a share of those royalties as profits. The value of Sand Vegas NFTs is subject to cryptocurrency market fluctuations and Sand Vegas openly speculates that the price of the NFTs will dramatically increase over time, which it plans to promote through marketing campaigns.

31. The substance of Sand Vegas' NFT offerings, promising to generate profits for consumers that purchase them, constitute investment contracts as described in S.E.C. v. W.J. Howey Co., 328 U.S. 293, 66 S. Ct. 1100 (1946).

32. Sand Vegas offers and advertises its NFTs, casino services, and plan for expansion online throughout various forums, which are accessible to citizens of the Commonwealth of Kentucky. As of the date of this order, Sand Vegas has no measures in place to prevent the offer or sale of securities to citizens of the Commonwealth of Kentucky.

33. The Respondents have never been registered with the Department and have never sought registration for the Sand Vegas NFTs.

34. Sand Vegas' NFTs do not qualify for an exemption from registration.

35. Based on the facts set forth above, Sand Vegas is offering and/or selling unregistered securities in Kentucky through publicly available channels online, in contravention of KRS 292.340.

36. Sand Vegas has demonstrated an alarming disregard for regulatory authority and public safety regarding securities. Despite claiming that it will obtain necessary licensure to operate their business activities, Sand Vegas has stated that securities laws and regulations do not apply to its offerings and Respondents will take steps to ensure its NFTs are not regulated by securities laws.

37. Sand Vegas' representations regarding its securities, speculation upon those securities' increase in value, and various representations Sand Vegas has made in the course of its business conduct present a growing Department concern for consumer safety in a fledging industry that may be subject to volatile market fluctuations and business considerations that Sand Vegas has not yet disclosed to potential investors as of the date of this Order.

38. Delay in issuing a final order to cease and desist in this case would cause direct harm to the public due to Respondents' current and foreseeable conduct. Failure of the Department to enter an emergency order to cease and desist in this case could result in extensive financial losses to the citizens of the Commonwealth, and consumers harmed in this way may have little to no recourse whatsoever. The emergency nature of this order is essential to protect the interests of the citizens of the Commonwealth due to the high volume of assets and volatile nature of NFTs valued in a metaverse by reference to cryptocurrency.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that:

1. Respondents shall **CEASE AND DESIST** from soliciting or selling any security in Kentucky unless that security is registered with the Department pursuant to KRS 292.340; and
2. Respondents shall **CEASE AND DESIST** from any and all activity which would otherwise violate the Act.

SO ORDERED on this the __18th__ day of __April__, 2022.

**Charles
A. Vice**

Digitally signed by: Charles
A. Vice
DN: CN = Charles A. Vice
email = charles.vice@ky.gov
C = US O = Dept. of
Financial Institutions OU =
PPC/OFI/Commissioner
Date: 2022.04.18 12:16:10 -
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_____/s/ Charles A. Vice_____
CHARLES A. VICE
COMMISSIONER

NOTICE TO RESPONDENTS

You are hereby notified that you are entitled to request an emergency hearing. If requested, an administrative hearing shall be held within ten (10) days pursuant to the provisions of KRS Chapter 13B.125. Please submit any request for hearing, in writing, to Brandon Adcock, Staff Attorney, Kentucky Department of Financial Institutions, 500 Mero Street 2 SW 19, Frankfort, Kentucky 40601. Alternatively, you may also have the right to the judicial review of this Order in Franklin Circuit Court pursuant to KRS 292.470(1).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Emergency Order to Cease and Desist was sent on this the ~~10th~~ day of April, 2022 by the method indicated below to the following:

Via certified mail, return receipt requested:

Martin Schwarzberger
Riga Fereou Street 47, 6013
Larnaca, Cyprus
Respondent

Finn Ruben Warnke
Georgiou Seferis, 11, 7562,
Majestic Gardens P1 B2
Apartment/Office 105
Tersefanou, Larnaca, Cyprus
Respondent

Agent on behalf of Sand Vegas Casino Club
c/o Administrator of Namecheap, Inc.
Kalkofnsvegur 2,
Reykjavik, Iceland
Respondent

Alternate addresses via certified mail, return receipt requested:

Martin Schwarzberger
Georgiou Seferis, 11, 7562,
Majestic Gardens P1 B2
Apartment/Office 105
Tersefanou, Larnaca, Cyprus
Respondent

Martin Schwarzberger
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4600 East Washington Street
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Martin Schwarzberger
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Tersefanou, Larnaca, Cyprus
Respondent

Agent on behalf of Sand Vegas Casino Club
c/o Namecheap, Inc.
4600 East Washington Street
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Via email:

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Counsel for Department of Financial Institutions

Kentucky Department of Financial Institutions

Name: Alison Reed

Title: Executive Staff Advisor