

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
AGENCY CASE NO. 2019-AH-00028



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

JOSEPH DURBIN
GAME DESIGNS, LLC
BLUE WHALE GAMING, LLC

RESPONDENTS

FINAL ORDER

Comes now the Department of Financial Institutions (“DFI”), pursuant to Kentucky Revised Statute (“KRS”) 292.470, KRS 292.500 and 808 Kentucky Administrative Regulation (“KAR”) 10:225, by counsel, and hereby brings this **FINAL ORDER** against Joseph Durbin, Game Designs, LLC, and Blue Whale Gaming, LLC. In support thereof, DFI alleges as follows:

SERVICE OF THE ADMINISTRATIVE COMPLAINT

1. On August 28, 2019, DFI sent, via certified mail, a copy of an Administrative Complaint to Respondent Joseph Durbin (“Durbin”), to his last known address of 5618 Grandel Blvd., Louisville, KY 40258. (A copy of the Administrative Complaint is attached). The Administrative Complaint was delivered on August 30, 2019.

2. On August 28, 2019, DFI sent, via certified mail, a copy of an Administrative Complaint to Respondent Blue Whale Gaming, LLC “Blue Whale Gaming.” This copy of the Complaint was mailed to Jimmy Lee Dizney (agent for service)/ Blue Whale Gaming, LLC at 2521 Guelat Avenue, Louisville, KY 40216. The Administrative Complaint was delivered on August 30, 2019.

3. On August 28, 2019, DFI sent, via certified mail, a copy of an Administrative Complaint to Respondent Game Designs, LLC (“Game Designs”). This copy of the Complaint was mailed to United States Corporation Agents, Inc. (agent for service)/ Game Designs, LLC at 900 Corporate Campus Drive, Suite 300, Louisville, KY 40223. The Administrative Complaint was delivered on August 30, 2019.

4. Respondent Durbin contacted the DFI via telephone on September 5, 2019. At that time, Respondent Durbin was advised to obtain counsel, to submit a response to the complaint, and to request a hearing. On September 10, 2019, Respondent Durbin submitted an email request for an extension regarding a response to the complaint. At that time, Respondent Durbin was given fourteen (14) additional days to file a response. On October 4, 2019, Respondent Durbin again requested an extension of the deadline for filing a response to the complaint. At that time, Respondent Durbin was given until October 11, 2019, to file a response.

5. On October 11, 2019, Respondent Durbin sent an email to DFI’s legal division. The email did not take the form of an answer to the complaint. In that email, Durbin admitted to selling securities to investors K.S., W.B., and P.T. He also admitted to depositing investor funds into his personal bank accounts. The majority of the letter was dedicated to discussing his past and current personal issues.

6. Jimmy Dizney – agent of service for, and managing member of Respondent Blue Whale Gaming – contacted DFI via phone on September 9, 2019. At that time, Mr. Dizney was advised to obtain counsel, and to speak to counsel regarding the need to file a response and request a hearing. Mr. Dizney has had no further contact with DFI.

7. Respondents failed to answer to the complaint, request additional time to file an answer beyond October 11, 2019, and did not request a hearing on the matter. DFI now enters this Final Order.

STATEMENT OF FACT

8. DFI is the agency within Kentucky state government charged with enforcement of the provisions of KRS Chapter 292 (the Securities Act of Kentucky, the “Act”) and the rules and regulations enacted thereunder.

9. Durbin is the owner and managing member of Game Designs and Blue Whale Gaming; his last known address is 5618 Grandel Blvd., Louisville, KY 40258.

10. Game Designs is a Kentucky limited liability company; the last known address of its principal office is 5618 Grandel Blvd., Louisville, KY 40258.

11. Blue Whale Gaming is a Kentucky limited liability company; the last known address of its principal office is 2521 Guelat Avenue, Louisville, KY 40216.

12. On September 9, 2015, after receiving complaints from two investors, W.B and K.S., DFI opened an investigation into the activities of Durbin, Game Designs, and Blue Whale Gaming. In his complaint, investor W.B. alleged that, on or around February 13, 2013, he entered into an investment contract to purchase an ownership interest in Game Designs, and in the games “Suitz” and “Triple Win Bingo” for a total investment was of fifteen thousand dollars (\$15,000). W.B. further stated that he was not provided notice or disclosures as to how the proceeds were to be used. In his complaint, investor K.S. stated that he entered into an investment contract to purchase an ownership interest in Game Designs, on or around February 1, 2013, for an investment of eleven thousand six hundred sixty-seven dollars and sixty-seven cents (\$11,667.67). K.S. further

stated that he was not provided financial records, disclosures, or statements by which to determine that his investment went toward its intended purpose.

13. During the investigation, DFI identified ten (10) total investors who entered into investment contracts with Durbin, who sold the securities. These investors stated that they had purchased an interest in Game Designs, Blue Whale Gaming, in a company “to be named at a later date,” or in games named “Suitz” and “Triple Win Bingo.” DFI obtained five (5) written investment contracts. One of these contracts was a Certificate of Ownership and Investment that conveyed a 1.25% interest in Blue Whale Gaming to investor P.T. This contract was signed by Durbin, as well as the three other members in Blue Whale Gaming.

14. DFI determined that the securities in question were not registered, nor was an exemption from registration available. In addition, Respondent Durbin was not registered as an agent to sell securities. Moreover, DFI ascertained that Durbin deposited all of the investor funds into personal checking and/or savings accounts in his name, and failed to disclose that these funds were being used for personal expenses. DFI further determined that Durbin failed to disclose the use of investor proceeds, risks to investors, and the presence of other investors. Durbin failed to state that the securities were not registered and that he was not registered as an Agent to sell securities. Durbin also failed to provide required disclosure material to investors.

STATUTORY AUTHORITY

15. KRS 292.310(19), in pertinent part, states “[s]ecurity” means “any 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...”

16. KRS 292.330(3) states, in relevant part, “[i]t is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration....”

17. Under KRS 292.340, “[i]t 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.”

18. Under KRS 292.320(1), “[i]t is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly: (a) To employ any device, scheme, or artifice to defraud; (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

19. The Commissioner possesses a range of administrative authority in addressing violations of the Act, including the imposition of civil fines up to twenty thousand dollars (\$20,000.00) for each violation of the Act. *See* KRS 292.337 and KRS 292.500(14).

20. KRS 292.470 states: [w]henver 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:

(3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:

- (a) To cease and desist from the activity;
- (b) To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or
- (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

CONCLUSIONS OF LAW

21. Respondent Joseph Durbin, acted as an unregistered agent when he offered to sell and did sell securities, on behalf of the issuers Game Designs, LLC and Blue Whale Gaming, LLC, to investors W.B and K.S., as well as others, in violation of KRS 292.330(3).

22. Respondents Joseph Durbin, Game Designs, LLC, and Blue Whale Gaming, LLC, offered to sell and did sell to investors W.B and K.S., as well as others, unregistered securities, pursuant to the definition under KRS 292.310(19), without first registering the securities with DFI in violation of KRS 292.340.

23. Respondents Joseph Durbin, Game Designs, LLC, and Blue Whale Gaming, LLC, failed to disclose material facts to investors regarding the securities investments, in violation of KRS 292.320(1), when Durbin failed to disclose the use of proceeds, failed to disclose risks to investors, failed to provide notice to investors that the securities were not registered, and failed to disclose the presence of other investors.

ORDER

THEREFORE, based upon the foregoing Findings of Fact, Statutory Authority and Conclusions of Law, the Commissioner hereby ORDERS:

1. Respondents Durbin shall pay a civil fine in the amount of fifty thousand dollars (\$50,000.00) for violations of the Act, pursuant to KRS 292.500(14);
2. Respondent Game Designs shall pay a civil fine in the amount of sixty thousand dollars (\$60,000) for violations of the Act, pursuant to KRS 292.500(14);
3. Respondents CEASE and DESIST from all unregistered activity in the state of Kentucky, pursuant to KRS 292.470(3)(a);
4. Respondents shall pay restitution to the investors in an amount to be determined
5. This is a FINAL and appealable Order.

IT IS SO ORDERED on this the 30th day of April, 2020.



CHARLES A. VICE
COMMISSIONER

Certificate of Service

I hereby certify that a copy of the foregoing **FINAL ORDER** was sent by certified mail return receipt requested on this the 30 day of April, 2020, to:

Joseph Durbin
5618 Grandel Blvd.
Louisville, KY 40258

United States Corporation Agents, Inc., *as agent for service*
Game Designs, LLC
9900 Corporate Campus Drive, Suite 300
Louisville, KY 40223

Jimmy Lee Dizney, *as agent for service*
Blue Whale Gaming, LLC
2521 Guelat Avenue
Louisville, KY 40216

Hand delivered to:

Kathryn Adams Cornett, Attorney
Department of Financial Institutions
500 Mero Street, 2 NW #37
Frankfort, KY 40601
Phone: 502-782-9065

*Amy Haley
for Allison Reed*