

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 216 MM 2017

SANDS BETHWORKS GAMING, LLC,

Petitioner

v.

**PENNSYLVANIA DEPARTMENT OF REVENUE; C. DANIEL HASSELL
IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF REVENUE; and THE
PENNSYLVANIA GAMING CONTROL BOARD,**

Respondents

**RESPONDENTS' ANSWER TO THE PETITIONER'S APPLICATION
FOR LEAVE TO FILE A POST-SUBMISSION COMMUNICATION**

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Date: August 20, 2018

**RESPONDENTS' ANSWER TO THE PETITIONER'S APPLICATION
FOR LEAVE TO FILE A POST-SUBMISSION COMMUNICATION**

The Respondents, the Pennsylvania Department of Revenue, C. Daniel Hassell in his official capacity as the Secretary of the Pennsylvania Department of Revenue, and the Pennsylvania Gaming Control Board, through their undersigned counsel, respond to the Petitioner's Application for Leave to File a Post-Submission Communication as follows:

1. The averments contained in this numbered paragraph are admitted.
2. The averments contained in this numbered paragraph are admitted.
3. The averments contained in this numbered paragraph are admitted.
4. The averments contained in this numbered paragraph are admitted in

part and denied in part. The brief Respondents filed on April 3, 2018, stated that they would "voluntarily attempt to secure a refund for Sands and all similarly situated slot machine licensees if this Court determines that the challenged provisions of the Gaming Act are unconstitutional." Respondents' Brief at 22. That brief was filed roughly three months before the end of the relevant fiscal year. That fiscal year ended on June 30, 2018. Pending a decision by the Court in this action, and depending on the substance of that decision, the Gaming Control Board is statutorily obligated to distribute funds from the Casino Marketing and Capital Development Account ("CMCD Account") in accordance with the applicable

provisions of the Gaming Act. By way of further information, the money in the CMCD Account is to be distributed pursuant to procedures and guidelines promulgated by the Board. Those procedures and guidelines require that mandatory distributions be made in September of each calendar year. The Respondents, of course, will comply with any orders entered by the Court. The averments contained in this numbered paragraph are denied to the extent that they imply that the Respondents agreed not to distribute funds from the CMCD Account unless and until a decision is rendered in this case.

5. The averments contained in this numbered paragraph are admitted. The Respondents acknowledge the authenticity of the letter that the Petitioner has attached to its application. By way of further information, the money in the CMCD Account is to be distributed pursuant to procedures and guidelines promulgated by the Board. Those procedures and guidelines require that mandatory distributions be made in September of each calendar year. The Respondents, of course, will comply with any orders entered by the Court.

6. The averments contained in this numbered paragraph are admitted in part and denied in part. Once distributions are made from the CMCD Account based on gross terminal revenue levels for the previous fiscal year, it may not be feasible for the Respondents to refund the supplemental daily assessment payments to the Petitioners for payments made during that fiscal year. If such distributions

are made and the Court subsequently invalidates the statutory distribution scheme, the Respondents will still attempt to provide the Petitioners with refunds for supplemental daily assessment payments made during the fiscal year beginning on July 1, 2018.

7. The averments contained in this numbered paragraph are admitted in part and denied in part. The Court lacks jurisdiction to entertain the Petitioner's Application for Special Relief in the Nature of a Preliminary Injunction. Under 4 Pa. C.S. § 1904, the Court has original jurisdiction to entertain only a "request for declaratory relief." The averments contained in this numbered paragraph are denied to the extent that they imply that the Court has jurisdiction to consider the Petitioner's request for permanent injunctive relief. The averments contained in this numbered paragraph are otherwise admitted. By way of further information, the Respondents do not oppose the Petitioner's request for permission to submit and file its Application for Special Relief in the Nature of a Preliminary Injunction. If such permission is granted to the Petitioner and the Application is subsequently filed, the Respondents will respond directly to the Application within the period of time set by the Court.

WHEREFORE, the Respondents do not oppose the Petitioner's request for leave to file its Application for Special Relief in the Nature of a Preliminary Injunction.

Respectfully submitted,

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By: /s/ Anthony Thomas Kovalchick
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CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Anthony Thomas Kovalchick
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CERTIFICATE OF SERVICE

I hereby certify that, on August 20, 2018, I caused a true and correct copy of the foregoing Respondents' Answer to the Petitioner's Application for Leave to File a Post-Submission Communication to be sent to the following:

VIA ELECTRONIC FILING

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