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Miami-Dade Circuit Judge

Michael Hanzman (Courtesy photo)

### Miami Judge to Weigh Whether Crypto Platform FTX's **Investment Product Is** a Security The potential ruling could be bad news for defendant FTX's former brand ambassadors, such as defendant Tom

Brady, who would be liable for promoting an unregistered security. January 20, 2023 at 09:39 PM 4 minute read Cryptocurrency

Michael A. Mora 🗦





Adam Moskowitz is joined by his partner Joseph M. Kaye, as well

The FTX bankruptcy filing was the largest of several failures by

as David Boies and Stephen Zack of Boise Schiller Flexner

# • The Howey test determines whether a transaction or an investment

cryptocurrency platforms last year.

What You Need to Know

- contract qualifies as a security if it meets three requirements.
- Class action attorneys for the investors who lost billions of dollars
- in the collapse of the FTX platform have asked the Miami-Dade Circuit Court to determine whether the FTX yield-bearing accounts are a security.

Firm in Coral Gables, filed a motion for partial summary judgment

Adam Moskowitz, the managing partner of the Moskowitz Law

on this "specific and narrow question" that has plagued

that you could have secondary liability by marketing an

worldwide cryptocurrency litigation. The potential ruling could be bad news for defendant FTX's former brand ambassadors, such as defendant Tom Brady. "If they are found to be securities, our contention is that these celebrities are strictly liable," Moskowitz said. "The law provides

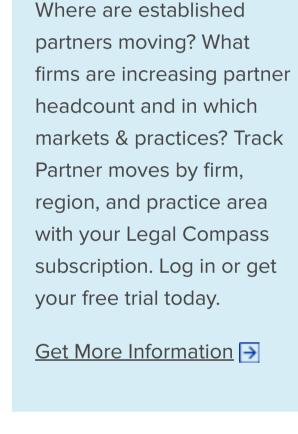
unregistered security and it is your responsibility to check if it is a

registered security. The SEC said that in 2016. If these are found

to be securities, you're liable for promoting an unregistered product." The FTX bankruptcy filing was the largest of several failures by cryptocurrency platforms last year, causing millions of users to be unable to access their accounts. These include Voyager Digital Ltd., Celsius Network LLC and Genesis Global Holdco LLC, who filed for bankruptcy protection alongside two subsidiaries late

Thursday evening in the U.S. District Court for the Southern

Dade Circuit Judge Michael Hanzman, Vijeth Shetty opened a yield-bearing account with FTX after multiple advertisements by the company and its celebrity endorsers, according to court documents. However, Shetty later learned **Talent On The** that the yield-bearing account was a way in **Move** which FTX lent invested customer assets out.



District of New York.

9 6

to investors. As such, the court interpreted it as an investment contract subject to regulation under the investor protection act. The First DCA cited the Florida Supreme Court's decision in *E.F.* Hutton v. Rousseff. The ruling held that "while the various states" securities laws operate in conjunction with federal law, federal laws do not supersede state law."

like FTX for offering almost this exact same type of interest-bearing account." And he pointed to the *Howey* test, as a way in which courts in the Sunshine State take into consideration the legislative purpose of the Florida Securities and Investor Protection Act. The First District Court of Appeal applied the *Howey* test in *Mehl* v. Office of Financial Regulation to determine that a pay telephone sale was a lease-backed program marketed and sold

Shetty argued that the U.S. Securities and

cryptocurrency brokers and exchanges just

**Exchange Commission has "targeted** 

And in the FTX class action before Miami-

Under the *Howey* test, a transaction or an investment contract qualifies as a security if it meets three requirements: First, an investment of money; second, in a common enterprise; and third, with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.

Now, Shetty argued that Miami-Dade Circuit Judge Hanzman

that his opening of a yield-bearing account with FTX was an

investment contract, and, therefore, a security.

should grant the motion for partial summary judgment, and rule

Shetty principally argued in the motion that, first, he deposited

\$25,500 into his yield-bearing account; second, Shetty capital

was tied to the capital of both FTX and other yield-bearing

account investors; and third, Shetty and other investors were

"guaranteed to earn up to 8% 'yield' on any fiat or crypto held in

And that led the appellate court to determine that Florida's

the sale and marketing of securities."

interpretation of its securities laws must take into consideration

the legislative purpose of the investor protection act, which was

to "protect investors from fraudulent and deceptive practices in

the yield-bearing account." Moskowitz, who is joined by his partner Joseph M. Kaye, as well as David Boies and Stephen Zack of Boise Schiller Flexner, said: "Judge Hanzman's ruling will have worldwide implications because it may not be binding on every court, but if it is a well-

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