

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA

OFFICE OF THE ATTORNEY  
GENERAL, DEPARTMENT OF LEGAL  
AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO. 51-2010-CA-2912-WS/G

BOTFLY L.L.C., DAVID R. LEWALSKI,  
JON J. HAMMILL, and JON J.  
HAMMILL, P.A.,

Defendants.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT  
DAVID R. LEWALSKI'S MOTION TO STAY PROCEEDINGS**

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida ("State of Florida"), by and through its undersigned attorneys, hereby files this Response in Opposition to Defendant David R. Lewalski's Motion to Stay Proceedings, and states as follows:

**Introduction**

This Court should reject the Motion to Stay Proceedings (the "Motion") by Defendant David R. Lewalski ("Lewalski") as an attempt to further delay this case. Lewalski claims that he needs more time to obtain counsel in this action. However, Lewalski has been given months to obtain new counsel and has failed to do so. Lewalski's pattern of conduct throughout the course of this litigation has been to delay this action whenever possible. Plaintiff is ready to move this case forward. Any further delay by Lewalski will likely harm investors, who have already been

victimized by the Botfly ponzi scheme.

### **Background Facts**

On April 1, 2010, Plaintiff filed the instant enforcement action alleging that Defendants were operating an illegal ponzi scheme, and this Court entered a Temporary Injunction freezing Defendants' assets and prohibiting Defendants from further soliciting persons to invest in Botfly. The Court also appointed a receiver to gather and preserve the assets of the Defendants. On April 2, 2010, Lewalski left the United States for Europe on a private jet paid with investor funds where he stayed for months and avoided service of process in this action. In July, 2010, Plaintiff filed an Amended Complaint with allegations supporting substitute service of process on the Secretary of State for Lewalski and Botfly L.L.C. ("Botfly") because Lewalski was still in Europe. As the deadline loomed for a response, Lewalski retained counsel who immediately requested an extension of time to respond to the Amended Complaint.

After Lewalski's arrest in November, Lewalski's previous counsel moved to withdraw. This Court granted the motion to withdraw and stayed this case until January 14, 2011, in part to allow Lewalski to retain substitute counsel. To date, Lewalski has failed to do so. In the instant Motion, Lewalski is requesting a stay of this case until the conclusion of the federal criminal trial, which he has requested to occur in the Fall of 2011. Thus, a stay in this action would delay this case for at least another six months. The primary basis for Lewalski's request is his claim that he needs additional time to obtain counsel in this case.

### **Argument**

The "trial court has broad discretion to order or refuse a stay of an action pending before it..." *Pilevsky v. Morgans Hotel Group Management, LLC*, 961 So. 2d 1032, 1034 (Fla. 3d DCA 2007). It is well established that "Article I, section 2 of the Florida Constitution provides that

justice shall be administered without denial or delay.” *State v. Antonucci*, 590 So. 2d 998, 1000 (Fla. 5th DCA 1991). “The State, as prosecutor, has the same right to justice without delay as any other party.” *Id.* Further, the person claiming the need to delay the case must provide a specific, justifiable reason for the delay. *Id.* Here, David Lewalski has failed to provide a sufficient reason to justify a stay of this case.

Lewalski’s request for a stay based upon his claim that he needs additional time to retain counsel lacks merit. Lewalski’s previous counsel moved to withdraw from the case in November, 2010. This Court entered an Order dated December 1, 2010, providing Lewalski with a stay of the case until January 14, 2011, to allow Lewalski to retain new counsel. It is now April, 2011, and Lewalski still has not retained counsel in this case. This Court has already provided Lewalski sufficient time to obtain substitute counsel. Therefore, no further extension of time is necessary.

Lewalski also appears to request a stay based upon his request to stay the receiver’s actions. However, any stay of the main proceeding against Lewalski would not operate to stay the actions of the receiver. *See* Order dated December 1, 2010. Lewalski also claims without any supporting facts that his “due process rights are not being recognized or protected.” Lewalski is simply wrong. Lewalski has had ample opportunity to contest the allegations against him and has failed to do so. Further, Lewalski can still participate in this case through filing documents with the Court. In summary, Lewalski provides no credible reason why this action should be stayed.

Moreover, the interests of investors should be weighed against Lewalski’s interests. Any delay of this action may harm the interests of investors who have money tied up in the Botfly investment scheme. A delay of six months or longer will be additional time that investors will

not have opportunity for a resolution of the instant claims and the potential to receive partial restitution.

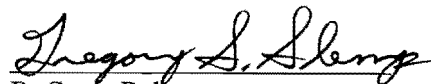
If this Court were to consider entering a stay in response to the Motion, any stay should be limited to Defendant David Lewalski only. The case should continue against the other Defendants. Defendant Botfly is not represented by counsel, and it is well established that an unrepresented corporation cannot file pro se pleadings. *Nicholson Supply Co. v. First Fed. Sav. and Loan Ass'n of Hardee County*, 184 So. 2d 438 (Fla. 2d DCA 1966).

**Conclusion**

David Lewalski has failed to provide sufficient reasons to delay this action. Accordingly, this Court should deny Lewalski's Motion to Stay Proceedings.

WHEREFORE, Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, prays this Court enter an Order denying the Motion to Stay Proceedings filed by Defendant David R. Lewalski, and for such other and further relief that this Court deems just and proper.

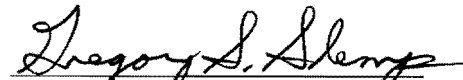
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jeffrey W. Warren and Karen Cox, Bush Ross, P.A., P.O. Box 3913, Tampa, FL 33601-3913; David R. Lewalski, Pinellas County Jail, Cell Location/Status: CEN-6C1-UN01-08-003, 14400 49<sup>th</sup> St. N., Clearwater, FL 33762; Steve D. Tran, 2285 First Avenue North, Suite A, Saint Petersburg, FL 33713; Jon J. Hammill, 6232 Fifth Avenue North, Saint Petersburg, FL 33710; and Gabriel Mazzeo via email at [gmazzeo11@gmail.com](mailto:gmazzeo11@gmail.com) on this 14<sup>th</sup> day of April, 2011.

  
Gregory S. Slemp