

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

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

Plaintiff,

Case No: 51-2010-CA-2912-WS/G

v.

**BOTFLY, LLC, DAVID R. LEWALSKI,  
and JON J. HAMMILL,**

Defendants.

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**JON J. HAMMILL'S MOTION TO DISMISS COMPLAINT**

Defendant Jon J. Hammill, by and through his undersigned counsel, does hereby move the Court to dismiss the Complaint filed by the Plaintiff herein. The grounds upon which this Motion is based and the substantive matters of law intended to be argued are:

1. As to the Complaint in its entirety, it fails to state a claim upon which relief can be granted in that certain specific allegations of the Complaint are contradicted by Affidavits and other papers served with the Complaint. For example, paragraph 37 of the Complaint says that all investor funds were paid to or for personal use of the Defendants, whereas the Affidavit of William Bivens, II, served with the Complaint demonstrated that only a small portion (approximately 10-15%) of the funds received by the Defendants from "investors" could be traced to their *possible* personal use, some of which were costs for salary, wages and other administrative expenses.

2. Count I of the Complaint fails to state a claim upon which relief can be granted because Plaintiff has failed to allege all conditions precedent and failed to attach to the Complaint material instruments and documents referenced therein (including Exhibit "A") in violation of *Fla. R. Civ. Pro.* 1.130(a). The material documents omitted include but are not

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limited to: Promissory Note, key website pages, an investor statement, documents containing the alleged, false, fictitious or fraudulent statement or representation referenced in the Complaint, certain key bank account records or evidence of written authorization by the Attorney General to bring this action as required by *Fla. Stat. 517.191(5)*

3. Count II of the Complaint fails to state a claim upon which relief can be granted or a claim for the appointment of a receiver under *Fla. Stat. 501.207(3)* can be made because all relief requested in Count II is barred and precluded by allegations contained on the face of the Complaint and facts admitted in papers served with the Complaint. This is because the Complaint alleges and admits that "The Promissory Note is a security pursuant to *Fla. Stat. 517.021(21)(a), (f) and (q)* because it is a note, evidence of indebtedness, and/or an investment contract." At another place, Plaintiff alleges "Defendants offered and sold securities and investments to persons in Florida and throughout the United States." No claim for relief exists under the Florida Deceptive and Unfair Trade Practices Act for, or in connection with, the sale of securities or actions or events involving the sale of securities or investments classified as securities in the State of Florida.

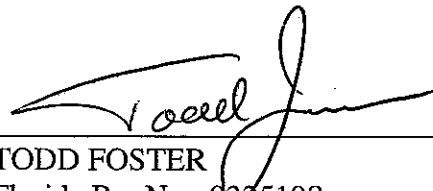
WHEREFORE, Defendant, Jon J. Hammill, requests this court enter an order dismissing the Complaint for failure to state a claim upon which relief can be granted and for any further relief the court deem appropriate.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to: **R. Scott Palmer, Special Counsel**, and **Gregory S. Slemp, Assistant Attorney General**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399; **Karen Cox, Esquire**, Bush Ross, 1801 N. Highland Avenue, Tampa, Florida 33602; and **David R. Lewalski, Individually and as Registered Agent of Botfly, LLC**, 2515 SW 35<sup>th</sup> Place, Apartment 112, Gainesville, Florida 32608 on this 26<sup>th</sup> day of April, 2010.



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