

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

11 MAR 30 PM 2:52
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

FILED

UNITED STATES OF AMERICA

v.

CASE NO. 8:10-CR-00501-T-27MAP

DAVID R. LEWALSKI

18 U.S.C. §§ 1341 and 2
18 U.S.C. §§ 1343 and 2
18 U.S.C. § 981(a)(1)(C) - Forfeiture
28 U.S.C. § 2461(c) - Forfeiture

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

MAIL FRAUD

A. Introduction

At all times material to this Superseding Indictment:

1. DAVID R. LEWALSKI, the defendant, was the founder, principal trader, and promoter of Botfly who operated a scheme to defraud victim investors by claiming he could generate returns of up to 10% per month by trading in the foreign currency market, when, in fact, he operated a Ponzi scheme and paid victim investors with other victim investors' funds.

2. Botfly, LLC (hereinafter "Botfly") was a Florida limited liability company incorporated on or about September 13, 2005, with a principal place of business at 12709 Clocktower Parkway, Bayonet Point, FL 34667, in the Middle District of Florida. The defendant represented that Botfly was in the business of foreign currency trading when, in fact, Botfly used only a small percentage of investor money for trading.

3. The foreign exchange ("forex") market is a worldwide decentralized market for the trading of currencies. The primary purpose of the forex market is to assist international trade and investment by permitting businesses to convert one currency to another.

B. The Scheme and Artifice

4. Beginning at least in or around 2004, and continuing through at least on or about November 4, 2010, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

did knowingly devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme

5. The manner and means by which the defendant sought to accomplish the scheme and artifice included, among other things, the following:

a. It was part of the scheme and artifice that the defendant would and did represent and cause to be represented to victim investors that he could generate returns on victim investor funds of up to 10% per month by trading their funds in the forex market.

b. It was further part of the scheme and artifice that the defendant would and did give and cause to be given promissory notes to victim investors that contained material false statements, to wit, that the victim investors would receive, in most instances, a 10% return on their investments per month and that Botfly would

repay the balance owed on the notes within 14 days of receiving written notice.

c. It was further a part of the scheme and artifice that the defendant would and did distribute and cause to be distributed monthly statements for victim investors that showed the victim investors' supposed accrual of investment returns each month.

d. It was further part of the scheme and artifice that the defendant would and did place and cause to be placed the majority of victim investor funds in domestic bank accounts to pay other victim investors and to enrich himself and others, rather than transferring the funds to forex trading accounts, as promised.

e. It was further part of the scheme and artifice that when victim investors would request disbursements of the supposed returns accruing to their accounts, the defendant would and did pay and cause victim investors to be paid with other victim investors' money, thereby creating the illusion that the fraudulent investment program was a solvent, profit generating enterprise earning actual returns.

f. It was further part of the scheme and artifice that the defendant would and did use Botfly victim investor monies to spend lavishly on himself and his associates for such things as high end real estate, private jet travel, luxury automobiles, designer clothing, and jewelry.

g. It was further part of the scheme and artifice that the defendant would and did conceal, misrepresent, and hide, and cause to be concealed, misrepresented, and hidden, the purpose of acts performed in furtherance of the scheme to defraud.

D. Mailing

On or about March 11, 2009, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

for the purpose of executing the aforementioned scheme and artifice and attempting to do so, caused to be delivered by U.S. Mail according to the direction thereon, an envelope containing a promissory note, which was mailed from Botfly, LLC, to investor A.P. in Tarpon Springs, Florida.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS TWO THROUGH SEVENTEEN

WIRE FRAUD

A. Introduction

Paragraphs 1 through 3 of Part A of Count One of this Superseding Indictment, Introduction, are realleged and incorporated by reference as if fully set forth herein.

B. Scheme and Artifice

From at least in or around 2004, and continuing until at least on or about November 4, 2010, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

did knowingly devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of the Scheme

The substance of the scheme and artifice is set forth in Part C of Count One of this Superseding Indictment, Manner and Means of the Scheme, the allegations of which are realleged and incorporated by reference as if fully set forth herein.

D. INTERSTATE WIRE TRANSMISSIONS

On or about the dates listed below, in the Middle District of Florida and elsewhere, the defendant,

DAVID R. LEWALSKI,

for the purpose of executing the aforementioned scheme and artifice and attempting to do so, transmitted and caused to be transmitted by wire in interstate commerce the following:

COUNT	DATE	TRANSACTION	FROM	TO
TWO	1/3/07	email with subject "Statement"	David Lewalski at Lewalski@aol.com	Investor M.C.'s Hotmail email account
THREE	2/28/09	email with subject "Forex investment"	J.H.'s Yahoo! email account	Investor A.P.'s America Online email account
FOUR	3/25/10	BotflyLLC.com account statement for N.O. Corp.	www.botflyllc.com	Investor J.B.
FIVE	3/25/10	BotflyLLC.com account statement for ATMM	www.botflyllc.com	Investor M.C.
SIX	2/1/10	wire transfer for \$25,000	Investor G.I.'s UnionBank account	Botfly LLC's Bank of America account ending in 5586

COUNT	DATE	TRANSACTION	FROM	TO
SEVEN	11/16/09	check number 473 for \$100,000	Investor P.K.'s JP Morgan Chase Bank account	Botfly LLC's Bank of America Account ending in 5586
EIGHT	1/6/10	check number 499 for \$350,000	Investor P.K.'s JP Morgan Chase Bank account	Botfly LLC's Bank of America Account ending in 5586
NINE	1/6/10	check number 500 for \$350,000	Investor P.K.'s JP Morgan Chase Bank account	Botfly LLC's Bank of America Account ending in 5586
TEN	1/6/10	check number 501 for \$300,000	Investor P.K.'s JP Morgan Chase Bank account	Botfly LLC's Bank of America Account ending in 5586
ELEVEN	11/18/08	check number 1217 for \$25,000	Investor L.F.C.C. Inc.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586
TWELVE	12/5/08	check number 1218 for \$75,000	Investor L.F.C.C. Inc.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586
THIRTEEN	1/12/09	check number 1225 for \$85,000	Investor L.F.C.C. Inc.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586
FOURTEEN	7/6/09	check number 1235 for \$120,000	Investor L.F.C.C. Inc.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586
FIFTEEN	10/5/09	wire transfer for \$40,000	Investor L.F.C.C. Inc.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586
SIXTEEN	10/7/09	wire transfer for \$10,000	Investor T.C.'s Union Bank of California account	Botfly LLC's Bank of America Account ending in 5586

COUNT	DATE	TRANSACTION	FROM	TO
SEVENTEEN	4/3/10	email with subject "Hey Buddy"	David Lewalski at lewalski@aol.com	Investor F.D.'s Hotmail email account

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE

1. The allegations contained in Counts One through Seventeen of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. From his engagement in the violations alleged in Counts One through Seventeen of this Superseding Indictment, defendant DAVID R. LEWALSKI shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all of his interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations.

3. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided

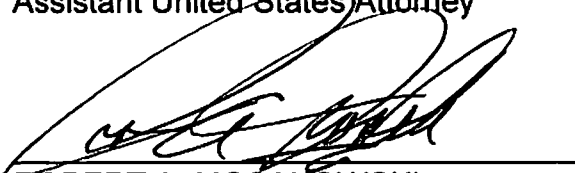
without difficulty, the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,



Foreperson

ROBERT E. O'NEILL
United States Attorney

By: 
AMANDA L. RIEDEL
Assistant United States Attorney

By: 
ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes Section

DENIS J. MCINERNEY
Chief, Fraud Section
Criminal Division
United States Department of Justice

By: 
GLENN CHERNIGOFF
Special Attorney
Criminal Division, Fraud Section
U.S. Department of Justice

FORM OBD-34
APR 1991

No. 8: 10-cr-00501-T-27MAP

UNITED STATES DISTRICT COURT

Middle District of Florida
Tampa Division

THE UNITED STATES OF AMERICA

vs.

DAVID R. LEWALSKI

SUPERSEDING INDICTMENT

Violations:

18 U.S.C. §§ 1341, 1343 and 2

A true bill,


Foreperson

Filed in open court this 30th day
of March, 2011.

Clerk

Bail \$ _____