

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.,

JURY TRIAL DEMANDED

Defendants.

AMENDED COMPLAINT

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida (“OAG”), by and through its undersigned attorneys, hereby sues Botfly L.L.C., David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A. and alleges as follows:

Jurisdiction and Venue

1. This is an action on behalf of consumers for temporary and permanent injunctive relief, appointment of a receiver, civil penalties, equitable relief, restitution, divestment of assets, and attorneys’ fees and costs for defendants’ violations of the Florida Securities and Investor Protection Act, Fla. Stat. §§ 517.011 et seq. and the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 et seq.
2. This Court has jurisdiction pursuant to the provisions of said statutes.
3. The statutory violations alleged herein occurred in or affected more than one

judicial circuit in the State of Florida.

4. Venue is proper in the Sixth Judicial Circuit for Pasco County, because at least one of the Defendants is located in Pasco County, Florida, and the causes of action arose at least in part in Pasco County, Florida, because the Defendants transacted business in Pasco County, Florida, and much of the conduct alleged herein occurred in Pasco County, Florida.

5. The OAG has the authority to enforce the Florida Securities and Investor Protection Act. The OAG has received written permission from the Florida Office of Financial Regulation to pursue this action.

6. The OAG is the enforcing authority of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes.

7. The OAG has conducted an investigation and the head of the enforcing authority, Attorney General Bill McCollum, has determined that an enforcement action serves the public interest pursuant to Chapter 501, Part II, Florida Statutes.

8. Defendants, at all times material hereto, have engaged in “trade or commerce” by advertising, soliciting, offering, or distributing a good or service, within the definition of § 501.203(8), Florida Statutes.

9. Defendants, at all times material hereto, provided goods or services as defined within § 501.203(8), Florida Statutes.

10. Defendants, at all times material hereto, solicited consumers within the definitions of § 501.203(7), Florida Statutes.

The Defendants

11. Defendant Botfly L.L.C. (“Botfly”) is a Florida limited liability company with its principal place of business in Pasco County, Florida. Botfly has solicited payments from several

investors in Pasco County, Florida.

12. Defendant David R. Lewalski (“Lewalski”) is a resident of Alachua County, Florida. Lewalski has conducted business personally in the State of Florida. Lewalski is the Manager and Registered Agent of Botfly and controls Botfly.

13. On information and belief, Lewalski left the United States of America on or about April 2, 2010 and has not returned. On information and belief, Lewalski has actual knowledge of this lawsuit and has communicated with investors and attorneys regarding this lawsuit. Lewalski is concealing his whereabouts. As a result, Defendant Botfly has failed to maintain a registered agent in the State of Florida as it is required to do pursuant to the Florida Statutes. Accordingly, both Lewalski and Botfly have appointed the Florida Secretary of State as their agent on whom process in this action may be served. An Affidavit of Diligent Search is attached hereto as Exhibit “A.”

14. Defendant Jon J. Hammill (“Hammill”) is a resident of Pinellas County, Florida. Hammill is a representative and agent of Botfly.

15. Defendant Jon J. Hammill, P.A. is a Florida corporation with its principal place of business in Pinellas County, Florida. Hammill is the President and Registered Agent of Jon J. Hammill, P.A.

The Scheme

16. This case involves a Ponzi scheme beginning as early as 2005, and continuing through the commencement of this action, soliciting money from consumers in Florida and the United States totaling more than \$23 million. On information and belief, more than 500 persons and entities have invested in Botfly, and of these investors, more than 200 are Florida residents.

17. According to the U.S. Securities and Exchange Commission, a Ponzi scheme is “an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity.”¹

18. Defendant Lewalski devised the Ponzi scheme through his company Botfly. Hammill and his company, Jon J. Hammill, P.A., assisted Lewalski in implementing and carrying out the Ponzi scheme through Botfly.

19. Defendants Lewalski and Hammill recruited persons to invest in Botfly with promises of lavish returns on their investments. Lewalski and Hammill claimed that they earned 19% per month interest on their money by buying and selling currency. Lewalski and Hammill promised to pay investors a 10% per month return on their investments if they would invest in Botfly.

20. Defendants signed and provided to at least one investor a “Promissory Note” at the time the investor invested money in Botfly.

21. Defendant Botfly’s Promissory Note contains representations, which Defendants knew were false at the time that they made the representations.

22. A true and accurate copy of the Promissory Note is attached hereto as Exhibit “B.”

23. On information and belief, more than 500 investors in Botfly received from Defendants Promissory Notes similar to the Promissory Note attached as Exhibit B.

¹ <http://www.sec.gov/answers/ponzi.html>.

24. Thereafter, Defendants would provide an investor with a password to a Botfly website location where monthly statements were provided to an investor indicating a 10% per month return on investment for the investor.

25. In the Promissory Note, Defendants claimed that the principal amount of the investment was to be held for "investment and margin purposes only." However, this statement was false at the time it was made because Defendants knowingly used investor funds for their own personal use, including the purchases of luxury automobiles such as a Porsche and a Land Rover.

26. Furthermore, Defendants promised the investor that Defendants would pay 10% interest per month to investors on the principal amount of their investments. However, this statement was false and Defendants knew this statement was false at the time it was made.

27. Botfly's bank account records demonstrate that Defendants were paying and transferring investor funds into the personal accounts of Defendants Lewalski and Hammill. For example, Hammill and his company, Jon J. Hammill, P.A., were paid more than \$1.5 million in investor funds from Botfly. Jon J. Hammill, P.A. paid approximately \$742,000 of Botfly investor money directly to Hammill. Further, Lewalski made at least \$345,000 in cash withdrawals of investor funds. These funds paid to Hammill, Lewalski, and Jon J. Hammill, P.A. were never repaid to investors.

28. In addition, Botfly's bank account records indicate that investor funds were used for personal expenses such as payments totaling more than \$616,000 for luxury automobiles including at least one Porsche and one Land Rover, more than \$155,000 for expenses at lavish resort hotels, and more than \$475,000 for private jet charter services. Also, Lewalski spent at least \$244,000 of investor funds at lavish retailers such as Gucci, Cartier, and Hermes of Paris.

29. Botfly's bank account records also indicate that Botfly was using funds received from new investors to pay returns to existing investors, which is a common characteristic of a Ponzi scheme. Defendants deliberately concealed this fact from its investors.

30. Defendants failed to invest most of the money received from investors. The first potential investment of approximately \$1 million occurred in September, 2009, many months after Defendants began receiving funds from investors. However, almost \$200,000 of this investment was eventually paid back into Lewalski's personal bank account and was not paid to investors.

31. Defendants' Ponzi scheme is destined to collapse as all Ponzi schemes eventually will collapse. Upon collapse, investors are typically left with nothing. However, in this case, it is believed that Defendants' Ponzi scheme is still running, and the instant action will provide relief to investors before the eventual collapse of Defendants' Ponzi scheme.

32. Defendants have willfully and purposefully concealed their fraudulent scheme and actions so that the causes of action could not have been discovered until now.

33. Any conditions precedent to the maintenance of this action have occurred or have been waived.

Count I

Violation of the Florida Securities and Investor Protection Act

34. This is an action against Defendants Botfly L.L.C., David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A. in excess of \$15,000, exclusive of attorneys' fees and costs, pursuant to Fla. Stat. §§517.191 and 517.301, for violation of the Florida Securities and Investor Protection Act.

35. Plaintiff OAG adopts, realleges, and incorporates by reference paragraphs 1 through 33 above as if fully set forth herein.

36. Defendants offered and sold securities and/or investments to persons in Florida and throughout the United States.

37. Investors tendered money to Defendant Botfly at the request and solicitation of Defendants Lewalski and Hammill based upon promises of 10% monthly interest returns, which funds Defendants were obligated to invest. In return for an investment, the investor received a Promissory Note from Defendants.

38. The Promissory Note is a security pursuant to Fla. Stat. § 517.021(21)(a), (f), (q), because it is a note, an evidence of indebtedness, and/or an investment contract.

39. Instead of investing the funds received from investors as promised, Defendants Botfly, Lewalski, and Hammill diverted the funds to personal accounts of Lewalski and Hammill and to the account of Jon J. Hammill, P.A., paid investor funds to Lewalski, Hammill, and Jon J. Hammill, P.A., and otherwise spent the investor funds on personal expenditures, and used some new investor funds to pay returns to existing investors.

40. Plaintiff is authorized to bring this action pursuant to Fla. Stat. § 517.191(5) (2009), because it has reason to believe that Defendants have engaged or are engaged in an “act or practice constituting a violation of s. 517.275, s. 517.301, s. 517.311, or s. 517.312, or any rule or order issued under such sections.”

41. Section 517.301(1)(a), Florida Statutes, declares that it is unlawful for any person to “employ any device, scheme, or artifice to defraud” in connection with the offer or sale “of any investment or security.”

42. Defendants Botfly, Lewalski, and Hammill, have violated Section 517.301(1) by employing a device, scheme, or artifice to defraud persons investing money in Botfly through promising falsely that investors would receive a 10% per month return on their investments. Defendants have relied upon funds received from new investors to pay any returns that have been paid to existing investors and have not actually invested money received from investors. These actions constitute a scheme to defraud.

43. Further, Defendant Jon J. Hammill, P.A. has violated Section 517.301(1) by employing a device, scheme, or artifice to defraud persons investing money in Botfly through providing a mechanism for investor funds to be diverted from Botfly accounts by Lewalski and Hammill into the possession and control of Hammill without repaying investors or investing the funds.

44. Further, Section 517.301(1)(c), Florida Statutes, declares that it is unlawful for a person to “knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.”

45. Defendants Botfly, Lewalski, and Hammill violated Section 517.301(1)(c) by falsely stating to investors that Defendants would use money invested in Botfly for “investment or margin purposes only.” Lewalski and Hammill have absconded with investor funds by placing investor funds in personal accounts controlled by Lewalski, Hammill, or Jon J. Hammill, P.A. and paying themselves with investor funds. In addition, Lewalski and Hammill have used investor funds to make extravagant purchases of personal items such as sports cars, luxury resort hotel stays, private jet charter services, and items from lavish retailers. Further, investor funds

were not held in a margin account. Accordingly, Defendants Botfly, Lewalski, and Hammill have knowingly and willfully falsified, concealed, or covered up, by a trick, scheme, or device, the material fact that Defendants were not investing funds received from investors as promised in violation of Section 517.301(1)(c).

46. Moreover, Defendants Botfly, Lewalski, and Hammill violated Section 517.301(1)(c) by making false, fictitious, or fraudulent statements or representations, or making or using false writings or documents, knowing the same to contain any false, fictitious, or fraudulent statement or entry. Defendants Botfly, Lewalski, and Hammill falsely promised investors that the investors would receive a return on their investment of 10% per month. In reality, Defendants have relied upon the funds received from new investors in order to pay any returns provided to existing investors and have not actually invested the money received from investors. Defendants have concealed from investors that Botfly is actually a Ponzi scheme.

47. Unless Defendants are temporarily and permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public for which there is no adequate remedy at law. The public interest also favors the entry of injunctive relief to protect the public and investors from the Defendants' fraudulent scheme.

48. Plaintiff requests appointment of a receiver over the assets of Defendants and over the business of Botfly pursuant to Fla. Stat. § 517.191(2).

49. Plaintiff requests the entry of an order of restitution for Defendants to pay restitution to investors pursuant to Fla. Stat. § 517.191(5).

WHEREFORE, Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida, prays this Court enter a judgment in its favor and against defendants Botfly

L.L.C., David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A. entering temporary and permanent injunctions enjoining current and future violations of Chapter 517, freezing Defendants' bank accounts, appointing a receiver, entering other injunctive relief, ordering restitution, assessing civil penalties against Defendants, dissolving Botfly, L.L.C., awarding attorneys' fees and costs to Plaintiff, and for such other and further relief that this Court deems just and proper.

Count II

Violation of the Florida Deceptive and Unfair Trade Practices Act

50. This is an action against Defendants Botfly L.L.C., David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A. in excess of \$15,000, exclusive of attorneys' fees and costs, for violation of the Florida Deceptive and Unfair Trade Practices Act.

51. Plaintiff OAG adopts, realleges, and incorporates by reference paragraphs 1 through 33 above as if fully set forth herein.

52. Section 501.204(1), Florida Statutes, declares that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

53. Defendant Botfly has committed the following acts or practices that are unfair, deceptive, or unconscionable in willful violation of Chapter 501, Part II, Florida Statutes:

(a) Soliciting investors to invest in Botfly by misrepresenting that investors would receive 10% interest per month on their investments;

(b) Falsely promising to use funds invested in Botfly for investment or margin purposes only;

(c) Using investor funds for purposes other than investment or margin purposes as was represented in the promissory notes provided to investors including using

investor funds to purchase items such as luxury automobiles, resort hotel stays, private jet charter services, and lavish retailer purchases;

(d) Diverting investor funds from Botfly accounts into personal accounts controlled by Lewalski or Hammill or by paying investor funds to Lewalski or Hammill;

(e) Providing false monthly statements to investors indicating that investors were receiving interest on their investments at 10% per month when investors' funds were not actually accruing interest at that rate and the majority of investor funds were not even invested;

(f) Committing theft of investor funds pursuant to Fla. Stat. § 812.014(1) by knowingly obtaining money from investors with the intent to either temporarily or permanently deprive the persons of the money and appropriate the money to his own use or the use of others not entitled to the use of the money;

(g) Committing cheating pursuant to Fla. Stat. § 817.29, Florida Statutes, by intentionally obtaining both the possession and ownership of investors' money by means of misrepresentations with the intent to defraud the investors; and

(h) Conspiring with one or more defendants to engage in one or more of the above actions.

54. Defendant David R. Lewalski has committed the following acts or practices that are unfair, deceptive, or unconscionable in willful violation of Chapter 501, Part II, Florida Statutes:

(a) Soliciting investors to invest in Botfly by misrepresenting that investors would receive 10% interest per month on their investments;

(b) Falsely promising to use funds invested in Botfly for investment or margin purposes only;

(c) Using investor funds for purposes other than investment or margin purposes as was represented in the promissory notes provided to investors including using investor funds to purchase items such as luxury automobiles, resort hotel stays, private jet charter services, and lavish retailer purchases;

(d) Diverting investor funds from Botfly accounts into personal accounts controlled by Lewalski or Hammill or by paying investor funds to Lewalski or Hammill;

(e) Providing false monthly statements to investors indicating that investors were receiving interest on their investments at 10% per month when investors' funds were not actually accruing interest at that rate and the majority of investor funds were not even invested;

(f) Committing theft of investor funds pursuant to Fla. Stat. § 812.014(1) by knowingly obtaining money from investors with the intent to either temporarily or permanently deprive the persons of the money and appropriate the money to his own use or the use of others not entitled to the use of the money;

(g) Committing cheating pursuant to Fla. Stat. § 817.29, Florida Statutes, by intentionally obtaining both the possession and ownership of investors' money by means of misrepresentations with the intent to defraud the investors; and

(h) Conspiring with one or more defendants to engage in one or more of the above actions.

55. Defendant Jon J. Hammill has committed the following acts or practices that are unfair, deceptive, or unconscionable in willful violation of Chapter 501, Part II, Florida Statutes:

(a) Soliciting investors to invest in Botfly by misrepresenting that investors would receive 10% interest per month on their investments;

(b) Falsely promising to use funds invested in Botfly for investment or margin purposes only;

(c) Using investor funds for purposes other than investment or margin purposes as was represented in the promissory notes provided to investors including using investor funds to purchase items such as luxury automobiles, resort hotel stays, private jet charter services, and lavish retailer purchases;

(d) Diverting investor funds from Botfly accounts into personal accounts controlled by Hammill or Lewalski or by paying investor funds to Lewalski or Hammill;

(e) Providing false monthly statements to investors indicating that investors were receiving interest on their investments at 10% per month when investors' funds were not actually accruing interest at that rate and the majority of investor funds were not even invested;

(f) Committing theft of investor funds pursuant to Fla. Stat. § 812.014(1) by knowingly obtaining money from persons with the intent to either temporarily or permanently deprive the persons of the money and appropriate the money to his own use or the use of others not entitled to the use of the money;

(g) Committing cheating pursuant to Fla. Stat. § 817.29, Florida Statutes, by intentionally obtaining both the possession and ownership of investors' money by means of misrepresentations with the intent to defraud the investors; and

(h) Conspiring with one or more Defendants to engage in one or more of the above actions.

56. Defendant Jon J. Hammill, P.A. has committed the following acts or practices that are unfair, deceptive, or unconscionable in willful violation of Chapter 501, Part II, Florida Statutes:

(a) Receiving investor funds from Botfly and failing to invest the funds or repay the money to investors;

(b) Paying investor funds received from Botfly to the personal bank accounts of Hammill; and

(c) Conspiring with one or more Defendants to engage in theft of investor funds pursuant to Fla. Stat. § 812.014(1) by knowingly obtaining money from persons with the intent to either temporarily or permanently deprive the persons of the money and appropriate the money to his own use or the use of others not entitled to the use of the money.

57. The acts and practices of defendants have caused injury, damages, and prejudice to consumers and the public and constitute unconscionable acts or practices or unfair or deceptive acts and trade practices within the intent and meaning of Section 501, Part II, Florida Statutes.

58. Defendant Lewalski is a direct participant in the activities of Defendant Botfly.

59. Defendant Hammill is a direct participant in the activities of Defendant Botfly.

60. Defendant Hammill is a direct participant in the activities of Defendant Jon J. Hammill, P.A.

61. Unless Defendants are temporarily and permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public for which there is no adequate remedy at law. The public interest also favors the entry of injunctive relief to protect the public and investors from the Defendants' fraudulent scheme.

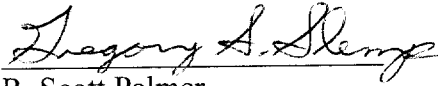
62. Plaintiff requests appointment of a receiver over the assets of Defendants and over the business of Botfly pursuant to Fla. Stat. § 501.207(3).

WHEREFORE, Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida, prays this Court enter a judgment in its favor and against defendants Botfly L.L.C., David R. Lewalski, Jon J. Hammill, and Jon J. Hammill, P.A. entering temporary and permanent injunctions enjoining current and future violations of Chapter 501, freezing Defendants' bank accounts, appointing a receiver, entering other injunctive relief, assessing civil penalties against Defendants, ordering disgorgement of the proceeds of the fraud, ordering divestment or forfeiture of assets, ordering restitution, awarding damages, dissolving Botfly, L.L.C., awarding attorneys' fees and costs to Plaintiff, and for such other and further relief that this Court deems just and proper.

Jury Trial Demand

Plaintiff hereby demands a trial by jury on all issues so triable.

BILL McCOLLUM
Attorney General


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Gregory S. Slemp
Assistant Attorney General
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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,

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

vs.

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

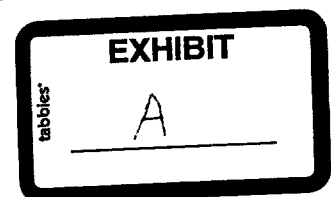
Defendants.

AFFIDAVIT OF DILIGENT SEARCH

STATE OF FLORIDA)
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared William T. Bivens, II, and who, being duly sworn, does swear and affirm as of the date hereof as follows:

1. I am a Financial Investigator with the Office of the Attorney General (OAG) of the State of Florida. I am over the age of 18 years and have personal knowledge of the matters set forth herein and being sworn, certify that the following information is true.
2. I have made a diligent search and inquiry to discover the current residence of David R. Lewalski and the registered agent of Botfly, L.L.C. David R. Lewalski is the Manager of Botfly, L.L.C. and is listed with the Division of Corporations as the Registered Agent of Botfly, L.L.C. David R. Lewalski's date of birth is May 15, 1963. My searches and inquiries included the following sources:
 - a. Telephone listings in the last known locations of defendant's residence.
 - b. Statewide directory assistance search.

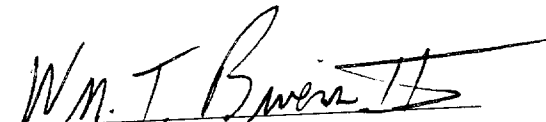


- c. Internet people finder search, including www.cpclear.com, www.switchboard.com, and www.ussearch.com.
 - d. Nationwide Masterfile Death Search.
 - e. Florida public records search including: Tax Collector's records, Tax Assessor's records, and Property Appraiser records for Alachua County and Pasco County, Florida.
 - f. Department of Motor vehicle records in the State of Florida.
 - g. Driver's License records search in the State of Florida.
 - h. Department of Corrections records search in the State of Florida.
 - i. Federal Prison records search.
 - j. Regulatory agencies for professional or occupational licensing, including the Florida Office of Financial Regulation and the Financial Industry Regulatory Authority.
 - k. Inquiry to determine if defendant is in military service.
 - l. Last known employment of defendant through the Florida Department of Revenue.
 - m. Child support enforcement records from the Office of the Attorney General, Child Support Enforcement Division.
3. The results of my searches yielded the following residential addresses for David R Lewalski: 2515 SW 35th Place, Apartment 112, Gainesville, Florida and 4813 SW 91st Drive, Gainesville, Florida. In addition, the results of my searches yielded the following business addresses for Botfly, L.L.C.: 5745 SW 75th Street #275, Gainesville, Florida, 4100 SW 41st Boulevard #5, Gainesville, Florida and 10249 Clocktower Drive, Bayonet Point, Florida.
 4. It is believed that David R. Lewalski has actual knowledge of this action, case number 51-2010-CA-2912-WS/G, which was filed against David R. Lewalski, Botfly, L.L.C., and Jon J. Hammill on April 1, 2010. For example, in the email attached as Exhibit 1, Defendant Jon J. Hammill attaches a document which Hammill claims to be authored by David R. Lewalski. In this document, David R Lewalski indicates knowledge of this lawsuit. The email was sent to investors on April 10, 2010. In addition, the email attached as Exhibit 2, received by investor PS from David R. Lewalski contains an email believed to be drafted by David R. Lewalski on or before April 4, 2010.
 5. It is believed that David R. Lewalski traveled to Brussels, Belgium on April 2, 2010, as evidenced by the itinerary of Atlantis Jets attached as Exhibit 3. It is further believed based on emails and conversations with investors that David R. Lewalski has not returned

to the United States. Based on the attached itinerary, attached as Exhibit 3, David R. Lewalski was scheduled to return on April 9, 2010.

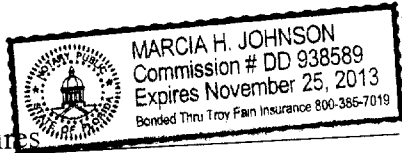
6. I spoke to the president of Universal Jet Aviation on May 11, 2010. He stated that his company brokered the flight to Atlantis Jets. He also stated that David R. Lewalski did not return as scheduled on April, 9, 2010, and that David R. Lewalski still owes Universal Jet Aviation for the trip.
7. The news article attached as Exhibit 4 dated April 23, 2010, written by The Gainesville Sun, further shows David R. Lewalski has knowledge of the complaint filed against him.
8. The letter from William Bryan, III to Jeffery Warren dated April 21, 2010, attached as Exhibit 5, further demonstrates that David R Lewalski has knowledge of the complaint filed against him.
9. Michael Moecker and Associates, Inc., the court appointed receiver, has searched all known residential locations of David R. Lewalski, including 2515 SW 35th Place, Apartment 112, Gainesville, Florida and 4813 SW 91st Drive, Gainesville, Florida. David R. Lewalski was not present or located during each search.
10. In addition, Michael Moecker and Associates, Inc. has searched all known business locations of Botfly, L.L.C., including 5745 SW 75th Street #275, Gainesville, Florida, 4100 SW 41st Boulevard #5, Gainesville, Florida, and 10249 Clocktower Drive, Bayonet Point, Florida. David R. Lewalski was not present or located during each search and no person designated to accept service of process for Botfly, L.L.C, was located.
11. Process Service of America, Inc. has attempted service of process on David R. Lewalski on thirteen separate occasions at 2515 SW 35th Place, Apartment 112, Gainesville, Florida, which is believed to be David R. Lewalski's last known address.
12. David R. Lewalski conceals himself so that process cannot be served personally upon him or upon Botfly L.L.C., and I believe there is no person in the state upon whom service of process would bind these absent or concealed Defendants. Further, Botfly L.L.C., has failed to continuously maintain a registered agent in the State of Florida upon whom process can be served.

FURTHER AFFIANT SAYETH NOT.


William T. Bivens, II

SWORN TO AND SUBSCRIBED before me this 12th day of July, 2010, by William T. Bivens, II, who is personally known to me, or who provided _____ as identification.

Marcia H. Johnson
NOTARY PUBLIC, State of Florida



My commission expires

From: jhammill@botflyllc.com
To: jonhammill@yahoo.com
Date: Sat, 10 Apr 2010 11:11:29 -0500
Subject:

This letter is to share some news with everyone. Please make sure to read the attachment from Dave.

One of our clients shared the opportunity with his son. Without doing any research himself, he contacted the Office of the Attorney General in the state of FL. After what I would call an incomplete investigation, we have been notified by the courts of some serious allegations, and thus have stopped us from doing any business. They have not requested to see our books, or trading history, and this could have been resolved in a couple days, if they had not backed us into a corner. They filed paperwork on Thurs April 1, seized all assets, and had a press release on Fri Apr, 2, but did not give us any documents until Tues Apr 6th. As of today, all of our assets in the US have been frozen, or seized.

The Attorney Generals office has been calling people in the state of FL, and in some cases have called a second time. After conversations with clients, and finding out that we have done everything we promised, they are trying to get you against us. They say it is as easy as turning the accounts over to them. Keep in mind that the court has already set up a receiver of all funds, and if we turn them over, it will be held by the state until they are ready to distribute, minus penalties, fees, and the \$300/hr they pay the receiver to watch over your money. We do not want the state to hold your money for a year or two as we will have to fight our allegations for some time. It is your money, and anything over should be profit. The investigator has said that if we prove we have all the money in the trading accounts, that this will all go away. So I asked him to put that in writing through the courts so we could do it, and he has refused.

The major difficulty we are having, is that if we had done something criminal, we are able to retain an attorney quickly. Because this is a civil action, brought on your behalf, an attorney is a privilege not a right. They have frozen all of our personal, and business accounts, as well as seized cars, computers, files, and all mail.

If anyone has sent any documents, or checks, please put a stop payment on them for your protection of the state depositing them. On the link is the damaging press release that came from the Office of the Attorney General.
<http://capitalsoup.com/2010/04/02/attorney-general-files-injunction-freezes-assets-in-alleged-ponzi-scheme>

We have been investigated in the past and have been able to continue to do business. We are confident we will get these allegations resolved and your money will be available in a timely fashion.

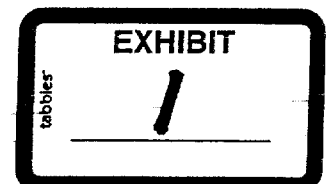
Kind regards,

Jon Hammill

Hotmail is redefining busy with tools for the New Busy. Get more from your inbox. [See how.](#)



To all members.doc



To all members,

First, I want to apologize for all of the stress that the last few days have caused you and your families. I was completely unaware of the events that were to occur. I was completely overwhelmed by a series of law enforcement maneuvers and legal events that I thought weren't possible in the U.S.A. My surprise and confusion quickly turned to survival and finding legal counsel. I want to thank everyone for their support, suggestions and referrals. I have had many conversations with many talented professionals.

One introduction made to me is a very strong litigator with a solid proven team. He has represented large corporations in financial matters as well as celebrities etc. We are having our second conversation this afternoon and I think this will be our man and we can start making our case. Thanks again to those who reached out and made the introduction.

Some of you are concerned because of my current location in Europe. I assure you I will be returning shortly and being that this is a civil matter not criminal I am not breaking any laws by being here. I merely needed a few extra days here to make phone calls without fear of being thrown out of my home without any assets etc. This came on the advice of an attorney I have on retainer who is not presently handling this civil case (not his field).

At this time all operating funds in the U.S are frozen until we can get this injunction lifted so we are unable to do any financial transaction of any sort until further notice. I know this is alarming to say the least but my personal funds are in there as well. My personal bank accounts are frozen and I have very low if non-existent cash reserves. Our attorneys have advised me we will address how to pay for legal fees with our next phone meeting.

In closing I feel confident now with a solid team of litigators. It won't be easy, as a lot you have told me when you or your businesses were wrongly accused breaking the law in the past I can be a long and frustrating road. Let's stay focused, have faith and let the attorney's do their job and we can get our lives back and get the facts straight. When I get clearance from the attorney I will address the issue of monies currently held overseas and our access to them.

Kindest regards,

David R Lewalski

7F FAX TGH

04/06/2010 11:58 8444448

I received this email from David and felt it was important to forward it immediately. [REDACTED]

From: David Lewalski
Sent: Sunday, April 04, 2010 9:58 PM
To: [REDACTED]
Subject: <no subject>

[REDACTED] please read this and if you think it will help please distribute. I am still in Europe with access to trading funds. I am waiting to hear from my lawyer. I will forward info when it arrives

Dave



04/06/2010 11:58

8444448

7F FAX 107

An Open letter to all: Concerning the son of [REDACTED]

By now most of you have been broadsided by the news of alleged charges of a Ponzi scheme supposedly orchestrated by me. This letter will address the charges as well as slanderous articles that appeared in local newspapers. In America, we are innocent until proven guilty, but I guess Todd Leskanic of the Tampa Tribune interned at the Pravda with Mr. Stalin! He stated I was unavailable for comment - no one ever contacted me or left a voicemail or any electronic message to my home or office! As far as the charges against me I will begin by saying that no one filed a complaint or reported they had lost any monies or been denied access to any monies involved with my company. His article does not state that anyone lost any money period! He only shared his opinion based on bias sentiment with inadequate facts. The son of a member of our group [REDACTED] made a call to the state's fraud hotline. This hotline is a valuable tool to protect the citizens of Florida, and I had always been under the impression as a Florida business owner that the state would contact said business and give them a forum to present themselves and address any concerns or complaints lodged against them. Instead, we were not contacted or even given the chance to cooperate with authorities.

This is shocking and disturbing to me as I was recently able to assist the state of Massachusetts and their postal inspector with a mail fraud investigation by providing documentation and a signed statement concerning a former member of our group. They called me and I was in their office within 48 hours. I would have gladly done the same thing in the state of Florida as my family has lived here for over 30 years and this is my home. I must also state that we have worked with the IRS to collect past due taxes from members of our group who were in a delinquent status and forwarded checks to that agency in a timely manner. Had someone from the state just picked up the phone and called us like other agencies have done we would have complied quickly and efficiently. As American's living in a free and democratic republic we must demand that our elected leaders observe and adhere to the rights guaranteed to us by The Constitution. When state or federal agencies start to seize personal and business assets without due process we are in danger of becoming something less than Americans!

And I must add that currently Jon Hammil is being denied access to his home by U.S. Marshall's who have not presented any signed warrants or legal documents to support their action, but they insist through intimidation that they won't let him enter HIS home because they feel he might destroy evidence? I was under the belief as a citizen of the United States that a judge signs a search warrant and then sworn officers of the law enter a home and conduct a search. But it seems with this action the state has decided to bypass the Constitution and act as thugs. Jon has never been arrested and has no criminal record.

As far as the article that appeared in the Tampa Tribune, I will address those slanderous statements with fact. Firstly I am 47 not 46 but we all know math is a tough subject. The article states I have never traded at all. As most you know I work 12 hours a day 5 days a week trading and have a Bloomberg terminal in my home office and trading accounts in six countries. Does Mr. Leskanic even know what a Bloomberg terminal is? And I can provide documentation showing on average two trades per day, five days a week for over four years. His article states that Jon Hammil transferred business funds into his personal account in a criminal action - this is impossible because I have monitored every check he signed and current online banking software makes it quite simple to detect. Business funds that were in

fact transferred into his account are sometimes commonly referred to as a "paycheck" Jon preferred to be paid as an independent contractor and address his tax burden as he saw fit. He has filed his returns with his accountant and as this quarter he is current. Leskanic's article states I spent money on chartered air service and this is true. But unknown to most, and to be totally transparent to you all, I will state that chartered air service provides a way to bypass all security checks of luggage etc. within the continental United States and when travelling abroad customs check is merely a wink and smile and stamp of the passport. So the secret is out! I am sure the black helicopters are on the way. But as a currency trader and businessman the integrity and value of the cargo sometimes outweighs the overall cost of travel. But I will swear in a court of law that I never used spoofed, altered or blacked out tail numbers to hide my travels or fudged time tables as I am told by an unnamed charter service that allegedly our politicians due to hide their lobbyist ties, sexual indiscretions etc. Hello - John Edwards and the alleged modified passenger manifest and non-existing tail numbers!

In the Tribune article Mr. Leskanic states I spent over \$600,000.00 on "high end" automobiles and this is true. Two are registered in my company's name and insured as company vehicles and as far as I know companies through out the United State are allowed to have cars registered under a company name and depreciate them in accordance with U.S. tax code. The other "high end" cars were not registered in mine or my company's name but were instead purchased on open "MSO" and were bought at wholesale prices with a members wholesale license under the guidance of members of our group with a combined 100+ years of automotive dealership experience. We planned on leasing a dealership property on alternate US 19 in Tarpon Springs with a small garage included. This was still in the planning phase and would be active after we purchased a three or four more vehicles. The individuals who proposed this plan were recently downsized or left their jobs at a local dealership. It is quite simple to compare odometer statements from day of delivery to current to see they are still within their delivery mileage give or take a few miles.

His article states I also spent money at designer stores and this is true. Some items were gifts for business partnerships to attain a more competitive trading rate or to handle what Howard Hughes called "the cost of doing business". Do you pay full price when you purchase a vehicle or do you barter? Also, I do collect a paycheck from this company and it is legal to buy products legally sold in the USA. "Lavish hotel's" is a broad term Leskanic uses but if I am in Vegas on business or pleasure I am usually staying at the Wynn and as 100's of you know from our gathering at Christmas, the Don Cesar is a Florida treasure with outstanding guest services and I love staying there!

And lastly the article states I was sued by Directv for \$531,000.00 and this is correct as well. At the time I was living in Arizona and my neighbor and I were shown how to get free PPV movies and sports on our Directv satellite receivers. So with a printed circuit board we could buy on an internet site called the "Shanty" we watched movies and were considered major league hackers in their eyes.. Follow the link to this article and have a good laugh
Panicked with a half million dollar lawsuit I declared bankruptcy. Eventually, I hired a lawyer in Tampa and with two phone calls they settled for I think, 10k or something close to that. Facts are facts but how they are presented is very important.

04/05/2010 11:58

8444448

IF FAX 137

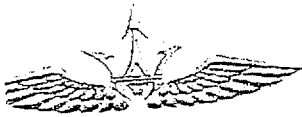
Last Thursday night I was informing Bank of America that I was travelling outside of the country for business and they responded by saying that all of my cards had been closed including my personal accounts. I was stunned, but had a plane to catch and fortunately had cards from my overseas accounts to rely on for expenses etc.

The next day after arriving in Antwerp I was contacted by Jon Hammill that people were at his house trying to get in. They did NOT have a warrant so he did not let them in as we were both trying to figure out what was going on. When he left his house on an errand he was not allowed to re-enter and they still had no warrant.

I am a big believer in data encryption and of never putting all of one's eggs in one basket as a way of reducing exposure and risk. One could simply read the article provided by the states examiner and realize that the four accounts they listed would never be enough to sustain what they allege for even a month. But they still beat their chest and proclaimed victory and destroyed reputations without even making an attempt to contact us. If they had I would have provided FULL disclosure of all account and tried to meet any compliance demands This is crazy! I want to sit down with the powers that be along with my attorney and straighten this out. But the recent "Orwellian" totalitarian tactics of law enforcement and seizing business and personal monies and property with a "guilty until proven innocent" formula as well as media that prints opinion without fact checking makes me believe that we are indeed losing more and more of our rights and freedom everyday. My character and reputation are now completely destroyed and that can never be replaced. Of the 50 members of our group that were contacted by law enforcement not one said a disparaging word or that they lost one dime!

I am six hours ahead of the east coast here in Europe. I am travelling tomorrow but will forward an update after speaking with legal counsel. Right now I don't know much but as soon as I know anything I will update this letter.

Kindest Regards,
Dave Lewalski



B1102

Atlantis Jets
3700 Airport Rd
Boca Raton, FL 33431
Phone: (866) 604-JETS
Fax: (561) 955-7072

ATLANTIS JETS, ITINERARY & QUOTE

Date: March 17, 2010

David Lewalski hereby directs Atlantis Jets, inc. to provide the following services:

AIRCRAFT Type: Gulfstream - IV (Heavy Premium Jet) 1 Pax Max

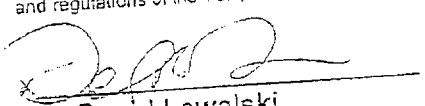
LEG	DEP. DATE	FROM	TO	DEP. TIME
1	04/02/2010	Gainesville, FL - GNV	Brussels, Belgium - EBBR	TBA
2	04/09/2010	Brussels, Belgium - EBBR <i>*customs stop and fuel required in Bangor, ME</i>	Gainesville, FL - GNV	TBA

	ADDITIONAL FEES	QUOTED AMOUNT
Fuel Surcharge:		172,744.00
Flight Charges:		INC
International Fees:		INC
Overnight Charges:		INC
Crew Charge:		INC
Landing Fees:		172,744.00
SubTotal:		

Segment Fees: /PAX/LEG/PAX: TBD

Total: 172,744.00

Please Note: Aircraft is subject to owner's approval and availability at time of booking. Additional costs may include additional flight time, international fees, hangar, and de-icing fees during inclement weather, catering, and flight phone charges. *Proper identification will be required to board any and all Atlantis Jets aircraft. Atlantis Jets abides by all rules and regulations of the TSA, FAA, and Part 125. 100% cancellation fee applies to international travel & one way flights


David Lewalski

By signing this itinerary, you agree to the standard terms and conditions of our charter broker & terms agreement attached hereto.

Atlantis Jets • 3700 Airport Rd • Boca Raton, FL 33431
Phone: (866) 604-JETS • Fax: (561) 955-7072





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Gainesville man accused of running Ponzi scheme

By Anthony Clark
Business editor

Published: Friday, April 23, 2010 at 3:21 p.m.

The Florida Attorney General's Office has accused a Gainesville man and his partner of running a nearly \$24 million Ponzi scheme and using investor money to finance a lavish lifestyle.

David Lewalski, 46, of Gainesville, and Jon Hammill, 38, of St. Petersburg, are the principals in Botfly LLC of Bayonet Point in Pasco County. They took in \$23.7 million from more than 550 investors between January 2008 and February 2010 on promises of a monthly return as high as 10 percent that they said was from buying and selling currency at a return of 19 percent.

But financial investigator Tim Bivens of the Attorney General's Office reported that bank subpoenas showed only \$1.1 million was invested, of which nearly \$200,000 was paid back to Lewalski's personal bank account. Another \$11.4 million from new investors was used to pay existing investors, making it a Ponzi scheme, Bivens reported.

Most of the remainder was spent on personal items.

Lewalski spent \$616,000 on a Porsche and a Land Rover, \$475,000 on private jet services, \$244,000 at retailers such as Gucci, Cartier and Hermes of Paris, \$155,000 on luxury hotels and \$45,000 on cosmetic and dental expenses, the Attorney General's Office reported.

Hammill was paid more than \$1.1 million from the money.

As of February, \$3.8 million remained.

A Pasco County circuit judge granted the attorney general's request to freeze company and personal assets earlier this month and received an injunction that prohibits the company from seeking new investments, destroying related documents or moving any assets. The court also granted the attorney general's request to appoint a receiver to collect remaining assets that would go to investors.

The attorney general is seeking a jury trial and has forwarded information to FDLE for possible criminal charges.

The FDLE is reviewing the information to determine its next steps, spokeswoman Heather Smith said.



Lewalski said he "would love to" comment about the case but was under attorney's orders not to.

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"I'm from Gainesville. I went to school there," he said.

Attorney Robert Scardino, of Houston, did not return a message for comment Friday.

Hammill does not have a listed number and could not be reached for comment.

Hammill told the Tampa Tribune that investigators haven't asked for documents that would show the investments were legitimate and that the accusations stem from Attorney General Bill McCollum's desire to appear proactive while campaigning for governor.

He offered at a court hearing to pay every Botfly investor in full but, according to the Attorney General's Office, refused to provide evidence the firm had the money to pay, the Tribune reported.

Of 550 investors, at least 220 are from Florida, many in the Pasco area, according to the attorney general.

The initial complaint came from a professor who said his elderly father invested \$20,000 in Botfly.

Both Lewalski and Hammill previously filed for personal Chapter 7 bankruptcy protection, Lewalski in 2005 and Hammill in 2009. Hammill is the owner of Jon J. Hammill P.A., while Lewalski is not registered as a principal with any other businesses in Florida.

From:

PINEYRO
LAW FIRM PA
ATTORNEYS AT LAW

April 27, 2010

VIA Facsimile (813) 223-9620

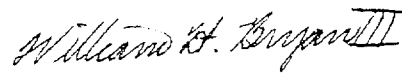
Jeffrey W. Warren, Esq.
Bush, Ross, P.A.
P.O. Box 3913
Tampa, FL 33601-3913

RE: *Removal of William Bryan, Esq., from Botfly Litigation
Distribution List*

Dear Mr. Warren:

I thank you for the courtesy of forwarding to me legal correspondence and pleadings relating to the Botfly litigation. Our firm does not represent either Messrs. Lewalski or Hammill, or the corporation Botfly, in this litigation. Given that I represented Mr. Lewalski in a separate matter, I agreed to receive and forward Botfly materials to Mr. Lewalski in order to assure that Mr. Lewalski received all such correspondence and pleadings while he sought legal counsel in this matter. However, from this date forward, I respectfully request that you no longer include me in your distribution list and that you discontinue sending our firm materials relating to the Botfly litigation. Again, I appreciate your having extended Mr. Lewalski this courtesy. Please do not hesitate to call me on my cell at 407-552-6216 or at the office number below if you should need anything from me.

Sincerely,



WILLIAM H. BRYAN III

Johnny A. Pineyro
Attorney at Law

William H. Bryan III
Attorney at Law

Susan Magee
Attorney at Law

Sigrid Vejar
Paralegal

Liza Guzman
Paralegal

Amy Pineyro
Office Administrator

Doris Lewis
Office Manager

Angehine Baynham
Marketing Director

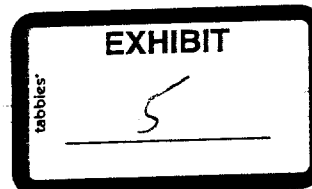
Andre Forde
Marketing

Maria Pineyro
Office Support

Kissimmee Office
1611 North Main Street
Kissimmee, FL 34744
Phone 407 935.1020
Fax 407 935.0320
Toll Free 800 693.1912

Stuart Jet Center
2501 S.E. Aviation Way
Suite K
Stuart, FL 34996
Phone 772 287.4568
Fax 772 872.4568

www.JusticeDeserved.com



Botfly, LLC

12709 Clocktower Parkway Bayonet Point, FL 34667

PROMISSORY NOTE

Borrower: Botfly LLC of 12709 Clocktower Parkway Bayonet Point FL 34667

Lender: C.W. Anderson of 106 Oakwood Circle Dickson, TN 37055

1. FOR VALUE RECEIVED, Botfly LLC promises to pay to Client at such address as may be provided in writing to Botfly LLC, the principal sum of "Ten" thousand (\$10,000) USD, with interest payable on the unpaid principal at the rate of 10% percent per month, calculated and paid monthly not in advance.

Initial x C.W. Anderson

2. This Note will be repaid in consecutive monthly installments of interest only on the 24th day of each month commencing the month following execution of this note until Client has provided Botfly LLC with written notice of demand and the balance owing under this Note will be paid within 30 days of any such notice of demand.

Initial x C.W. Anderson

3. This Note will be construed in accordance with and governed by the laws of the State of Florida.

Initial x C.W. Anderson

4. All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by Client in enforcing this Note as a result of any default by Botfly LLC, will be added to the principal then outstanding and will immediately be paid by Botfly LLC.

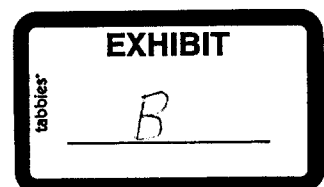
Initial x C.W. Anderson

5. This Note will ensure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of Botfly LLC and Client.

Initial x C.W. Anderson

6. Principal to be held for investment and margin purposes only. Ten percent (10.00%) of the principal to be paid to lender listed above in as long as principal amount for margin is held by Botfly LLC. Botfly LLC may terminate this agreement at anytime without penalty and full repayment made of principal plus any accrued interest within 30 business days

Initial x C.W. Anderson



Botfly, LLC

12709 Clocktower Parkway Bayonet Point, FL 34667

IN WITNESS WHEREOF Botfly LLC has duly affixed its signature by a duly authorized officer under seal on this 7th day of October, 2009.

X [Handwritten Signature]
Client Signature

X [Handwritten Signature]
Authorized Representative, Botfly LLC
Signature


X S.W.H.
Client Initial

X JH
Authorized Representative, Initial

SIGNED, SEALED, AND DELIVERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Complaint 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 and by email to Jon J. Hammill at jonhammill@yahoo.com on this 12th day of July, 2010.


Gregory S. Slemp