

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,

v.

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

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

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

This matter came before the court on June 15, 2011, upon the Plaintiff's Motion for Partial Summary Judgment. The court has had the benefit of the arguments and Memoranda of counsel, the last of which was received by the court on August 15, 2011. Based on the foregoing, it is

ORDERED as follows:

1. It is clear that the appellate courts of the State of Florida have rejected the argument that F.S. § 517.301(1)(a) has any scienter requirement. *Merrill Lynch, Pierce, Fenner & Smith v. Byrne*, 320 So. 2d 436 (Fla. 3d DCA 1975). Similar reasoning, albeit regarding a different section of chapter 517, can be seen in *State v. Houghtaling*, 181 So. 2d 636 (Fla. 1966) and *Huff v. State*, 646 So. 2d 742, 743 (Fla. 2d DCA 1994).

2. While the reasoning contained in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 96 S.Ct. 1375, 47 L.Ed.2d 668 (1976) leaves this court with serious reservations as to the continued viability

of *Byrne*, in matters involving the interpretation of the statutes of the State of Florida, it continues to be this court's duty to follow the decisions of the appellate courts of this state. The court has not been directed to any appellate decisions in the State of Florida which have rejected *Byrne*. If any change is to take place in the interpretation of F.S. § 517.301(1)(a), it must come from the appellate courts of this state.

3. Based upon the foregoing, this court finds there is no scienter requirement in F.S. § 517.301(1)(a) and the Plaintiff's Motion for Partial Summary Judgment is hereby **GRANTED** and the Plaintiff is hereby directed to prepare a partial summary judgment consistent with this order.

DONE AND ORDERED in chambers in New Port Richey, Pasco County, Florida this ____ day of August, 2011.

ORIGINAL SIGNED

AUG 23 2011

STANLEY R. MILLS
CIRCUIT JUDGE

STANLEY R. MILLS
Circuit Court Judge

Copies furnished to:

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