

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

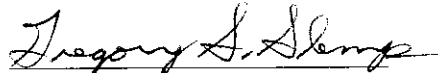
BOTFLY L.L.C., DAVID R. LEWALSKI,
JON J. HAMMILL, and JON J.
HAMMILL, P.A.,

Defendants.

NOTICE OF FILING SECOND AFFIDAVIT OF WILLIAM T. "TIM" BIVENS, II

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida,
by and through its undersigned attorneys, hereby gives notice that it is filing the Second
Affidavit of William T. "Tim" Bivens, II.

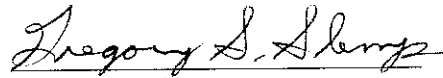
PAMELA JO BONDI
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Attorneys for Plaintiff

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 49th St. N., Clearwater, FL 33762; Steve D. Tran, 2285 First Avenue North, Suite A, Saint Petersburg, FL 33713; and Jon J. Hammill, 6232 Fifth Avenue North, Saint Petersburg, FL 33710; and Gabriel Mazzeo, 285 Ocklawaha Circle, Quincy, FL 32351 on this 11th day of May, 2011.


Gregory S. Slemp

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
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OFFICE OF THE ATTORNEY
GENERAL, DEPARTMENT OF LEGAL
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Plaintiff,

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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.

SECOND AFFIDAVIT OF WILLIAM T. "TIM" BIVENS, II

STATE OF FLORIDA)
COUNTY OF LEON)

1. I am a Financial Investigator with the Office of the Attorney General (OAG) of the State of Florida. I have been employed as a Financial Investigator for 18 (eighteen) years. I have a BA in Accounting from the University of West Florida. Additionally, I am a Certified Fraud Examiner, a Certified Internal Auditor and a Certified Government Auditing Professional.
2. Through my employment and education, I have become familiar with the term "Ponzi scheme." According to the Securities and Exchange Commission (SEC), 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
3. My duties as a Financial Investigator with the OAG include the investigation of security fraud. In that capacity, I was assigned to work on an investigation

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

relating to a complaint I received regarding Botfly LLC (Botfly).

4. Since the filing of my initial affidavit on April 1, 2010, I have received and reviewed additional banking records and trading records pertaining to Botfly, David R. Lewalski, Jon J. Hammill and Jon J Hammill, P.A.
5. The information contained in my affidavit is based on personal knowledge derived from my analysis of the banking records and trading records identified herein.
6. Additional Botfly banking records were produced by Bank of America which supplement an earlier production. The periods covered by the supplemental production for each of the Bank of America Botfly accounts are:

<u>Account No</u>	<u>Period Covered</u>
XXXXXXXXX5586	January 2007 and March –April 2010
XXXXXXXXX5540	March-April 2010
XXXXXXXXX7098	March-April 2010
XXXXXXXXX7434	March-April 2010

I have reviewed all Bank of America Botfly banking records produced by Bank of America. Mr. Lewalski has signatory authority on all of these accounts. Mr. Hammill has signatory authority for Bank of America Botfly account XXXXXXXXX7098.

7. As the investigation continued, I identified other bank accounts in the name of Botfly. Those accounts by banking institution, account number, and date opened are:

<u>Banking Institution</u>	<u>Account No.</u>	<u>Date Opened</u>
Wachovia n/k/a Wells Fargo	XXXXXXXXXX6928	10/2005
Florida Citizens Bank	XXXXXXXXXX4192	8/2008
VyStar Credit Union	XXXXXXX5861	8/2008
Fifth Third Bank	XXXXXXX2101	6/2007

I have reviewed all of the above identified Botfly banking records. Mr. Lewalski has signatory authority on all of these accounts.

During my review of these records, I identified more than 500 persons and entities that invested in Botfly.

8. I have also received and reviewed the banking records for Mr. Lewalski, Mr. Hammill and Jon J. Hammill, P.A. Mr. Lewalski maintained a personal checking

account at Bank of America, account number XXXXXXXX6691. Investor funds were deposited into this account and were misappropriated.

Mr. Hammill maintained two accounts at Wachovia Bank n/k/a Wells Fargo. One account is a personal checking account and the other is a business checking account in the name of Jon J. Hammill, P.A. The respective account numbers for these accounts are XXXXXXXXX2128 and XXXXXXXXX5195. Mr. Hammill also maintained a personal checking account at Bank of America, account number XXXXXXXX5458. A review of the Botfly banking records, as well as the banking records identified above for Mr. Hammill indicate that investor funds of approximately \$111,000.00 were disbursed to Mr. Hammill personally from Botfly accounts. In addition, Mr. Hammill through his company, Jon J. Hammill, P.A., received approximately \$1,394,717.00 from Botfly accounts. None of the monies Jon J. Hammill, P.A. received were returned to investors.

9. I have received and reviewed foreign currency trading records produced by Deutsche Bank AG. The records indicate that two accounts were opened in the name of Botfly c/o David Lewalski. One of the accounts ends in the number 3108 and the other account ends in 3177. Mr. Lewalski opened the 3108 account in August 2008 and opened the 3177 account in September 2008. The account statements for 3108 show that from August 2008 until August 2010, a total of \$1,100,000 of investor funds were deposited into the account, no funds were ever withdrawn and trading losses totaled \$687,798.94 not including fees of \$3,844.40.

The account statement for 3177 shows that from September 2008 until August 2010, a total of \$190,000 of investor funds were deposited into the account, no funds were ever withdrawn, a transfer of \$25,000 from account 3108 occurred on 7/20/09 and trading losses totaled \$207,105.11 not including fees of \$6,877.01.

A further review of the Deutsche Bank trading records disclosed that Mr. Lewalski opened an account in his name in June 2007. Mr. Lewalski's personal account ends in number 1771. The account statements for 1771 show that from June 2007 through August 2010, a total of \$220,000 was deposited, no withdrawals were made and trading losses totaled \$171,824.53 not including fees of \$2,454.63.

In addition to the three Deutsche Bank trading accounts referenced above, Mr. Hammill opened a trading account in his name in July 2008. Mr. Hammill's personal account ends in number 2962. The account statements for 2962 show that from July 2008 through August 2010, a total of \$283,500 was deposited, \$1,800 was withdrawn and trading losses totaled \$252,107.66 not including fees of \$545.79.

10. Investor funds totaling \$1,550,000 were transferred to a Dukascopy(Suisse) S A Swiss forex trading account during the period September 4, 2009 through April 4,

2010. The balance in this account as of August 19, 2010, is \$719,711.06. No profits from these trading accounts were ever distributed back to investors. Mr. Lewalski did however, withdraw approximately \$300,000 which was deposited into his personal Bank of America account XXXXXXXX6991 and not returned to investors.

11. Based on my review of all 8 (eight) Botfly bank accounts, Mr. Lewalski's personal account, Mr. Hammill's personal and business accounts and the Deutsche Bank trading accounts, I provide the following additional information:

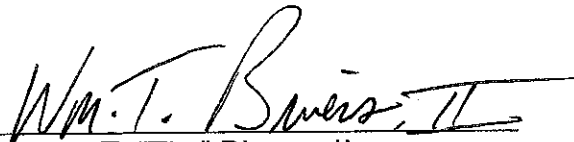
- a. Only a small percentage of investor monies were invested in forex trading through Deutsche Bank AG by Mr. Lewalski. The two (2) Botfly trading accounts suffered substantial losses and did not generate positive gains to fund the 10% per month compounded interest as promised to most investors. No funds were ever returned to investors from these accounts.
- b. Approximately \$29,926,178.34 of investor monies were deposited into accounts controlled by Mr. Lewalski and Mr. Hammill. Of that amount, approximately \$27,415,393.11 was deposited from December 1, 2008 forward.
- c. Approximately \$15,587,105.18 of investor monies were paid out to investors. Of that amount, approximately \$14,927,632.08 was paid out to investors from December 1, 2008 forward.
- d. Mr. Lewalski used investor monies to pay other investors and spent funds on himself and others.
- e. Mr. Hammill received approximately \$111,000.00 of investor monies which were not returned to investors.
- f. Mr. Hammill's company, Jon J. Hammill, P. A., received approximately \$1,394,717.00 from Botfly accounts. None of the monies Jon J. Hammill, P.A. received were returned to investors.

Mr. Hammill subsequently transferred approximately \$728,000 from his company, Jon J. Hammill, P.A., to personal bank accounts held by Mr. Hammill.

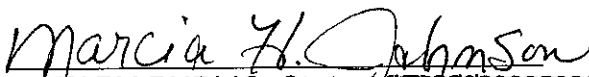
- g. Mr. Lewalski spent approximately \$766,766.91 of investor monies on high end automobiles.
- h. Mr. Lewalski spent approximately \$852,436.36 of investor monies on private jet service.

- i. Mr. Lewalski spent approximately \$337,329.54 of investor monies on motor bikes, high end bicycles and cycling equipment.
- j. Mr. Lewalski spent enormous sums of investor monies on high end hotels, high end retailers, cosmetic and dental procedures. Approximately \$1,124,894.05 was spent on these items.
- k. Mr. Lewalski received approximately \$912,509.23 directly or indirectly from Botfly accounts.

FURTHER AFFIANT SAYETH NOT.


William T. "Tim" Bivens, II

SWORN TO AND SUBSCRIBED before me this 11th day of May, 2011, by William T. Bivens, II, who is personally known to me , or who provided _____ as identification.

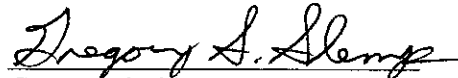

NOTARY PUBLIC, State of Florida



My commission expires _____

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