

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. _____

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

Defendants.

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 approximately 17 (seventeen) 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

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

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 relating to a complaint I received regarding Botfly LLC (Botfly).
4. The initial complainant, CWA, a Professor of Computer Science and Software Engineering, contacted our office through the Citizens Services Helpline. He reported that his elderly father had invested in Botfly.
5. CWA became suspicious because Botfly had offered his father investment returns which were inconsistent with prevailing rates of returns in today's market. He stated that Botfly was offering a 10 percent return per month on principal. This rate of return equates to an annualized return of 120 percent simple interest and if compounded annually, a much higher rate of return.
6. Based on my prior experience as a fraud investigator and my knowledge of realizable rates of return on investments in the current economic climate, I reached the conclusion that such a rate of return was not sustainable. Further, I concluded that offering such a rate of return was indicative that a Ponzi scheme was in operation.
7. Additionally, CWA provided me with a copy of a contract signed by his father that promised a 10 percent monthly rate of return as well as stating that the funds invested by his father would only be used for investment purposes. Based on CWA's suspicions and my review of the contract he provided, the OAG investigation was opened.
8. As an experienced fraud investigator, I know that investors in a Ponzi scheme often develop strong personal ties with those perpetrating the fraud. As a result, I feared that contacting other potential victims might well result in the perpetrators being notified of our investigation and dissipating whatever assets might remain, I therefore primarily focused my investigation on the banking records described below.
9. As part of the investigation, I personally conducted an analysis of bank records from Bank of America relating to Botfly. The records consist of bank account statements, signatory cards, checks from investors and checks written against the bank accounts.
10. These records were produced to the OAG pursuant to a subpoena and consist of seven separate accounts. Four of the accounts are Botfly business accounts. One account is a personal checking account of David R. Lewalski. Corporate records reveal that Mr. Lewalski is the Manager of Botfly LLC. The two remaining accounts are personal checking accounts of Jon J. Hammill. Mr. Hammill appears to be a representative of Botfly as

bank records reveal that he received and deposited the investor funds. The bank records cover the period of January 2008 through February 2010.

11. The focus of my analysis of the above referenced banking records was to perform a detailed review of the inflow and outflow of investor's funds. During my review, I saw transactions which show that investor funds were not invested, new investor funds were being used to pay returns to existing investors and investor funds were misappropriated by Mr. Lewalski and Mr. Hammill. This analysis shows that Botfly LLC had all the characteristics of a classic Ponzi scheme. A detailed summary of my observations and conclusions follows.

12. Mr. Lewalski opened each of the four Botfly accounts and is the principal signatory on all accounts. I have reviewed each of the accounts and analyzed the inflow and outflow of investor funds. The four Bank of America Botfly accounts are:

<u>Account No.</u>	<u>Account Name</u>	<u>Date Opened</u>
XXXXXXXX5586	Business	Prior to 1/1/08
XXXXXXXX5540	Business Interest	7/15/09
XXXXXXXX7098	Withdrawal	8/10/09
XXXXXXXX7434	Expense	9/19/09

13. Botfly Business account XXXXXXXX5586 (Botfly Business 5586), a non-interest bearing account, is used as a depository account for investor funds. During the period January 1, 2008 through February 28, 2010, over \$23.7 million of investor funds were deposited into Botfly accounts. A review of the bank statements and checks shows that the total number of investors is approximately 550, of that amount, 220 are known to be Florida consumers. A number of those consumers reside in or around Pasco County.

14. Mr. Lewalski received hundreds of personal checks and processed hundreds of wire transfers from investors. He also signed hundreds of checks and processed hundreds of wire transfers dispersing funds to investors.

15. A review of the investor checks shows that many of the investors wrote on the memo field, "loan to Botfly" or "Investment." Some investors wrote on the memo field "Investment to John Hammill" or "Att John H."

16. Based on a review of an outflow of funds from Botfly Business 5586, returns to investors totaled approximately \$3.67 million. During the period January 2008 until September 2009, it does not appear that any investor funds were placed in any type of investment vehicle. The banking records

show that new investor funds were used to pay returns to existing investors.

17. In July 2009, August 2009 and September 2009, Botfly accounts XXXXXXXX5540 (Botfly Business 5540), XXXXXXXX7098 (Botfly Withdrawal 7098), and XXXXXXXX7434 (Botfly Expense 7434) were opened respectively.
18. Once the three additional Botfly accounts were opened, Mr. Lewalski made transfers of investor funds from Botfly Business 5586 to each of these accounts. Specifically, \$6 million was transferred to Botfly Business 5540; \$7.4 million was transferred to Botfly Withdrawal 7098; and \$1.25 million was transferred to Botfly Expense 7434. Transfers of investor funds were also made from Botfly Business 5540 and Botfly Expense 7734 to Botfly Withdrawal 7098.
19. Mr. Lewalski used Botfly Withdrawal 7098 to return approximately \$7.69 million to investors through either check or wire transfers. While an approximate total of \$11.36 million (\$3.67 million from Botfly Business 5586 + \$7.69 million from Botfly Withdrawal 7098) went back to investors, Mr. Lewalski and Mr. Hammill collected over \$23.7 million.
20. More than 50 percent of investor funds were kept by Mr. Lewalski and Mr. Hammill. A portion of those funds were used for personal expenses such as jewelry, clothing, cosmetic and dental work, high end car purchases, private jet service, and resort hotels. Mr. Lewalski also made numerous cash withdrawals and dispersed funds to Mr. Hammill. The amounts of those disbursements as well as further analysis of each of the four Botfly accounts are detailed below.
21. Based on my review of the Botfly accounts, I provide the following additional information:
 - a. These accounts are not margin accounts; they are ordinary banking accounts.
 - b. \$325,000 of investor funds were transferred by Mr. Lewalski by wire to Fifth Third Bank.
 - c. \$690,000 of investor funds were transferred by Mr. Lewalski to Deutsche Bank Trust Company Americas. It appears these funds may have been transferred to a Deutsche Bank located in London.
 - d. \$1,050,000 of investor funds were transferred by Mr. Lewalski to UBS AG Bank in Zurich Switzerland to Dukascopy. Dukascopy is believed to be a trading platform based in Switzerland. The first

transaction was on September 4, 2009, which is believed to be the first investment of investor funds by Botfly. Returns from this investment of approximately \$200,000 were wired to Mr. Lewalski's personal Bank of America account XXXXXXXX6691 and not to investors.

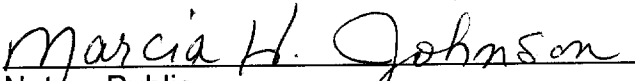
- e. \$336,000 of investor funds were deposited into Botfly Expense 7434. These funds were not invested.
- f. \$117,281 of investor funds were deposited into Botfly withdrawal 7098. A portion of this amount, \$20,000, is CWA's father's investment.
- g. Mr. Lewalski made cash withdrawals of at least \$345,000.
- h. Mr. Hammill and his company, Jon J. Hammill, P.A., received at least \$1,187,200 from Mr. Lewalski.
- i. Mr. Lewalski spent at least \$616,000 to purchase high end automobiles.
- j. Mr. Lewalski spent at least \$155,000 on luxury hotels.
- k. Mr. Lewalski spent at least \$244,000 at retailers such as Gucci, Cartier and Hermes of Paris.
- l. Mr. Lewalski spent at least \$475,000 on private jet service.
- m. Mr. Lewalski spent at least \$45,000 on cosmetic and dental expenses.
- n. Mr. Lewalski spent at least \$144,000 on motorcycle and cycling related items.
- o. As of February 2010, Botfly is still receiving money from investors.
- p. As of February 2010, funds on deposit for all Botfly bank accounts is \$3,821,140.

Further AFFIANT SAYETH NOT:


William T. "Tim" Bivens, II

Type of Identification Produced _____ or Personally Known

SWORN TO AND SUBSCRIBED before me this 31st day of March, 2010.


Notary Public

My Commission Expires: _____

