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,

JURY TRIAL DEMANDED

Defendants.
_____/

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, and Jon J. Hammill, 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.

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 corporation 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 is the Manager of Botfly.

13. Defendant Jon J. Hammill ("Hammill") is a resident of Pinellas County, Florida. Hammill is a representative and agent of Botfly.

The Scheme

14. This case involves a Ponzi scheme beginning at least as early as January, 2008, and continuing through the present date 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.

15. 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]

16. Defendants Lewalski and Hammill devised and implemented the Ponzi scheme through their company Botfly.

17. 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

[1] http://www.sec.gov/answers/ponzi.html.

promised to pay investors a 10% per month return on their investments if they would invest in Botfly.

18. Defendants signed and provided to at least one investor a "Promissory Note" at the time the investor invested money in Botfly.

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

20. A true and accurate copy of the Promissory Note is attached hereto as Exhibit "A."

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

22. 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.

23. 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.

24. 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.

25. 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 $1.1 million in investor funds. Further, Lewalski made at least $345,000 in cash withdrawals of investor funds. These funds paid to Hammill and Lewalski were never repaid to investors.

26. 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, Cartiers, and Hermes of Paris.

27. 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.

28. Defendants failed to invest most of the money received from investors. The first potential investment of approximately $1 million occurred in September, 2009, more than 20 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.

29. 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.

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

31. 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

32. This is an action against Defendants Botfly L.L.C., David R. Lewalski, and Jon J. Hammill, 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.

33. Plaintiff OAG adopts, realleges, and incorporates by reference paragraphs 1 through 31 above as if fully set forth herein.

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

35. 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.

36. 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.

37. 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, paid investor funds to Lewalski and Hammill, and otherwise spent the investor funds on personal expenditures.

38. 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."

39. 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."

40. 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.

41. 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."

42. 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 or Hammill 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).

43. Moreover, Defendants Botfly, Lewalski, 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.

44. 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.

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

46. 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, and Jon J. Hammill, 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

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

48. Plaintiff OAG adopts, realleges, and incorporates by reference paragraphs 1 through 31 above as if fully set forth herein.

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

50. 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.

51. 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.

52. 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.

53. 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.

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

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

56. 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.

57. 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, and Jon J. Hammill, 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.

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