

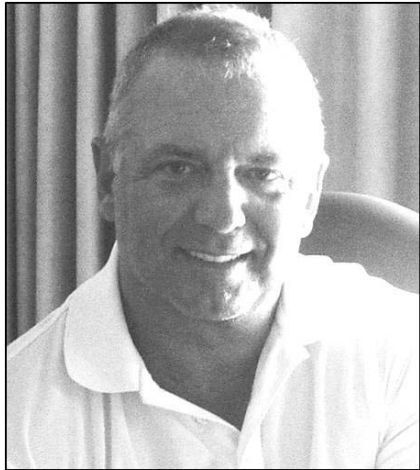
# Lobbyist John Swallow and his Mysterious Client: Winterfox, LLC.

*Swallow's alleged misuse of AG power to prosecute his client's foe.*

By Lynn Packer

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The charge is too startling to be true: A Canadian who fled Utah to escape prosecution accuses John Swallow of helping trump up the criminal charges against him. Brian Arthur Kitts, who has an outstanding warrant for his arrest in Utah, claims Swallow was helping a friend extract revenge for a lawsuit Kitts brought against Swallow's friend in federal bankruptcy court. Kitts alleges it was a clear abuse of the power of the office of Utah Attorney General. "My sense



**Brian Arthur Kitts**

is that Swallow is a dirty guy," Kitts said speaking from Canada in a phone interview.

The controversy centers on a \$1.35 million "hard money" loan Swallow's friend George Evan Bybee gave Kitts in December, 2004 via Bybee's shadowy company Winterfox, LLC. Kitts was desperate to save his Park City, Utah home from foreclosure and needed a short-term loan while arranging long-term financing.

Kitts's inability to repay the Winterfox loan forced him into bankruptcy. There, in Utah's federal bankruptcy court, a knock-down, drag-out fight erupted between Kitts and Bybee. Kitt's attorney filed a truth-in-lending lawsuit under the umbrella of the bankruptcy proceeding alleging that Bybee failed to follow the law when he made the Winterfox loan.

Before it was over Kitts claims Bybee falsified evidence, lied on the witness stand and behind the scenes got John Swallow to help bring criminal charges against Kitts. It ended with Kitts fleeing Utah and Bybee foreclosing on Kitts' Park City estate.

To raise eyebrows even higher, a man whose name has been in the news was in the middle of it all: so-called "fix-it man" and Mark Shurtleff confidant Tim Lawson. And Zions First National Bank may have been stuck with some of the financial fallout of the Winterfox loan.

Winterfox LLC only peeked briefly into public view in 2007 after that company and another George Bybee entity made illegal contributions to John Swallow's congressional campaign. Winterfox had been formed eight years earlier, in 1998, as a vehicle for Bybee's real estate ventures and, later, hard money (read high risk, high-interest, short-term) loans.

After Swallow worked as general counsel for Basic Research, LLC, Bybee's nutritional weight loss/wrinkle cream company Basic



**George Evan Bybee**

Research, he eventually became a registered lobbyist for Bybee personally and several of Bybee's entities like Winterfox, Xylexin and Florentine Artworks. Swallow's lobbyist job spilled over into the time he was a chief deputy attorney general.

The story of how Kitts and Bybee would do the Winterfox begins with Basic Research sponsoring a race car to promote one of its dietary supplements

## The Winterfox Loan

Basic Research had a sports marketing department that sponsored a drag racing team which ran under the name of one of its diet pills, Zantrex-3. After Bybee quit day-to-day work at Basic Research one of his new companies, Armored Coatings which also sponsored its own drag racer owned by Utah's Aaron Olivarez. His supercharged, hemi-powered machine had "Armored Coatings" emblazoned on the side. (After Armored Coating's demise Olivarez's sponsorship was picked up by the multilevel market company Solavei. He also pitches its low-cost cell phone service on YouTube. He was arrested in 2009 on domestic violence and assault charges unrelated to the Winterfox deal.)

Olivarez did more for Bybee than promote the coating product. He also helped Bybee's Winterfox do the short-term, high interest, \$1.35 million loan for Brian Kitts.

In late 2004 Kitts, a Canadian penny stock and dietary supplement promoter living in Utah needed a short term loan to provide time to refinance his home. He turned to a mortgage broker he knew. Michael Falk, for help. Falk, he said, did not come through but introduced him to Aaron Olivarez, Evan Bybee's drag racing friend. Olivarez connected Kitts with Bybee and a loan was put together via Winterfox.

Kitts said he soon learned that he was being charged \$600 a day interest, "nowhere near the rate I signed up for." He also took note of the fact had prior to closing he had not been provided disclosure documents as required by law.

Kitts says he was forced into bankruptcy to keep Winterfox from foreclosing. Then he sued Bybee and Winterfox in connection with the bankruptcy for failing to disclose what he thought were usurious loan terms.

At trial in federal court Bybee and Oliveraz claimed they had mailed Kitts the closing documents. Kitts calls that testimony "absolute perjury." "They committed fraud on a federal court." But Kitts says while the judge found they lied she did not punish them for the alleged perjury.

In the meantime, in July 2007, Utah's Division of Securities undertook an administrative action charging Kitts with securities fraud. And the Utah Attorney General's Office, base on a referral form the division, filed 17 criminal charges in Utah's Third District court.



Aaron Olivarez Mug shot



Zantrex-3 and Armored Coating Dragsters

The Securities Division alleged Kitts took \$87,500 from seven investors promising huge profits when his companies, NevWest and Brisam, went public. “When soliciting investors, the Division alleges that Kitts failed to disclose that he had an unpaid civil judgment against him of more than \$100,000, that he had an outstanding tax lien, and that one of his former companies declared bankruptcy the prior year,” the complaint read. “In reality, Kitts used the money from investors for personal expenses and Brisam Corp. never engaged in any type of business.”

The criminal case dragged on for months and months. After a first attempt at a plea bargain fell through Kitts sought political help. In September 2009 he was introduced to Tim Lawson who purportedly supposedly had clout with the AG’s office.

Kitts says Lawson claimed to be tight with John Swallow. Swallow at the time was a fundraiser and confidant of Utah Attorney General Mark Shurtleff and would soon be named a chief deputy.” The guy that came out of the woodwork as a guy for lack of a better term kind of a facilitator for Shurtleff and Swallow,” said a source familiar with the matter.

Kitts claims Lawson told him about a conversation he had with Swallow about Kitts’ criminal case. “Kitts is a bad man,” Swallow purportedly told Lawson. “He hurt my friend and I am going to make him pay.” (Lawson is recovering from knee and shoulder surgery and unavailable for comment.)