

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PASCO COUNTY, FLORIDA  
CIVIL DIVISION**

**OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS,  
STATE OF FLORIDA,**

**Plaintiff,**

**Case No.: 51-2010-CA-2912-WS/G**

**v.**

**BOTFLY, LLC, DAVID R. LEWALSKI,  
JON J. HAMMILL, and  
JON J. HAMMILL, P.A.,**

**Defendants.**

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**RECEIVER'S SECOND MOTION FOR APPROVAL  
OF DISPOSITION OF 2004 PORSCHE 911 TURBO CABRIOLET**

Michael E. Moecker, as Receiver of Botfly L.L.C., David R. Lewalski, and Jon J. Hammill and all other entities operated, controlled or otherwise associated with the Defendants' activities, pursuant to paragraph 4(i) of the Amended Order Appointing Receiver and by and through undersigned counsel, files this Second Motion for Approval of Disposition of a 2004 Porsche 911 Turbo Cabriolet. In support of the motion the Receiver states as follows:

1. On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida filed a complaint (the "**Complaint**") against Botfly, LLC, a Florida limited liability company ("**Botfly**"), David R. Lewalski, the manager of Botfly ("**Lewalski**"), and Jon J. Hammill, a representative and agent of Botfly ("**Hammill**"), for 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. The Complaint is

founded on the allegation that Lewalski and Hammill utilized Botfly to perpetrate a Ponzi scheme and that funds obtained by Botfly from investors, were principally used for Lewalski and Hammill's personal benefit and were not invested in the foreign currency exchange market as represented to the investors by Lewalski and Hammill.

2. By Order Appointing Receiver dated April 1, 2010, the Court appointed Michael E. Moecker or his designee employed by Michael Moecker & Associated, Inc. (the "**Receiver**") to be the Receiver of Botfly, Lewalski, and Hammill and all other entities operated, controlled, or otherwise associated with the Defendants' activities. The Court entered an Amended Order Appointing Receiver (the "**Order**") on April 14, 2010.

3. Paragraph 4(i) of the Order provides that among the Receiver's duties is the recovery and liquidation of assets: "The Receiver shall collect and reduce to money the Assets either by suit, in any court of competent jurisdiction, by public or private sale."

4. Since appointment, the Receiver has come into possession of 2004 Porsche 911 Turbo Cabriolet; VIN: WP0CB29934S675579; Tag No.: THX4X. Mileage 17,332 (the "**Porsche**"). The Porsche is registered to Jon Hammill.

5. On February 10, 2009, Hammill filed an individual Chapter 7 bankruptcy petition. In the petition and schedules, Hammill disclosed assets on deposit in financial accounts that totaled \$258.90 and \$20.00 in cash on hand.

6. After February 10, 2009, Botfly paid Hammill more than \$1.4 million to Hammill by way of payments to the Jon J. Hammill, P.A Wachovia account (acct. no. \*\*\*\*\*5195). Hammill is the President and sole owner of Jon J. Hammill, P.A.

7. Hammill deposited approximately \$500,000 from the Jon J. Hammill PA Wachovia account in his personal accounts at Bank of America and Wachovia.

8. Botfly was the source for substantially all of the deposits made in the Jon J. Hammill P.A. Wachovia account since February 10, 2009.

9. The 2004 Porsche was purchased by Hammill in October 2009.

10. Accordingly, the funds used to purchase the Porsche were derived from payments made by investors to Botfly.

11. The Receiver believes that it will be in the best interest of the Receivership Estate to sell the Porsche. The Porsche does not produce any revenue and the costs of storage and insurance for the Porsche deplete the assets of the Receivership. The Porsche should be sold as expeditiously as possible to maximize recovery for and minimize the cost to the Receivership.

12. By this motion, the Receiver requests authority to employ Mecum Auctions to sell the Porsche at an auction to be conducted in Houston, Texas, on April 13<sup>th</sup> and 14<sup>th</sup> for a commission of 7% with a registration fee of 10%.

13. The Court previously authorized Cliff Shuler Auctioneers, 422 Julia Street, Titusville, Florida, to sell the Porsche for a commission of 10% of the sales price. It was offered for sale in January but no sale was ultimately consummated.

14. Mecum Auctions can offer the Porsche for sale in a prime time slot on a Friday evening which should result in greater interest in the car. Although the estate will incur an additional cost to transport the car to Texas, the Receiver expects that the additional cost is justified by the expected additional buyers that will be in attendance. Sale of the Porsche on the basis set forth herein will be in the best interests of the Receivership Estate.

#### **MEMORANDUM OF LAW**

A court appointing a receiver may issue orders as are necessary and proper for the property and interests of those concerned. *City of Kissimmee v. Department of Environmental*

*Regulation*, 753 So.2d 770 (Fla. 5<sup>th</sup> DCA 2000). A receiver may sell receivership property where the character of the property or surrounding circumstances are such as to render a sale necessary for the adequate protection of the rights of the parties. *See Arzuman v. Saud*, 964 So. 2d 809 (Fla. 4<sup>th</sup> DCA 2007).

WHEREFORE, the Receiver moves the Court to allow the sale of the 2004 Porsche 911 Turbo Cabriolet.

Dated: Tampa, Florida  
March 23, 2012

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Second for Approval of Disposition of 2004 Porsche 911 Turbo Cabriolet has been delivered this 23<sup>rd</sup> day of March, 2012 to the below named parties in the manner indicated below:

Via E-Mail and U.S. Mail

Gregory S. Slep, Esq.

R. Scott Palmer, Esq.

Nicholas J. Weilhammer, Esq.

PL-01: The Capitol

Tallahassee, Florida 32399-1050

*Karen Cox*

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