

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,

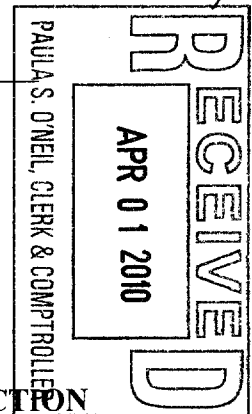
vs.

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

Defendants.

51-2010-CA-2912-WS / G

CASE NO. _____



**PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY INJUNCTION
WITHOUT NOTICE AND FOR APPOINTMENT OF RECEIVER**

Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida ("OAG"), by and through its undersigned attorneys, hereby files this Emergency Motion for Temporary Injunction without Notice and for Appointment of Receiver, pursuant to Fla. Stat. § 517.191(2), (5) and § 501.207(3), and Rules 1.610 and 1.620, Florida Rules of Civil Procedure, against Defendants Botfly L.L.C., David R. Lewalski, and Jon J. Hammill, and states as follows:

1. Plaintiff filed the instant action alleging 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 ("FDUTPA"), Fla. Stat. §§ 501.201 et seq.
2. Plaintiff adopts and incorporates herein each and every allegation and offer of proof set forth at length in its accompanying Memorandum of Law in Support of Its Motion for Temporary Injunction and for Appointment of Receiver and Affidavits.

3. Pursuant to the Fla. Stat. §§ 517.191(2), (5), and 501.207(3), the Attorney General is authorized to move this Court for equitable relief.

Based on the pleadings, affidavits, and exhibits filed herewith, it is alleged that:

a. Defendants operated a Ponzi scheme and received more than \$23 million in investment money from more than 500 consumers in Florida and throughout the United States.

b. Defendants Lewalski and Hammill recruited persons to invest in Botfly and promised to pay investors a 10% per month return on their investments. However, this statement was false and deceptive and Defendants knew this statement was false when Defendants made it.

c. Lewalski and Hammill signed and provided to investors a “Promissory Note” when consumers invested money in Botfly. Defendant Botfly’s Promissory Note contained representations, which Defendants knew were false at the time the representations were made, including the promise to pay investors a return of 10% per month on the investment.

d. 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 because Defendants knowingly used investor funds for their own personal use, including the expenditures of more than \$600,000 on luxury automobiles including a Porsche and a Land Rover.

e. Defendants failed to disclose to investors that Defendants were actually diverting a significant amount of investor funds into personal accounts controlled by Lewalski and Hammill.

f. Defendants failed to disclose to investors that Defendants were not even investing the majority of funds received from investors.

g. In addition, Defendants used funds received from new investors to pay returns to

existing investors, which constitutes strong evidence of the existence of a classic Ponzi scheme.

4. If Defendants are permitted to continue to conduct business and continue the fraudulent practices described above, the number of consumers aggrieved by these fraudulent acts and practices will increase unless equitable relief is granted by this Court. Plaintiff has no adequate remedy at law to protect the consuming public against these continuing fraudulent business practices.

5. Unsuspecting consumers have provided to Defendants more than \$23 million in investment funds. Defendants have illicitly diverted much of this money to themselves or have spent the money on their own personal purchases without investing the money. Irreparable harm will result to consumers without the requested relief. The irreparable harm will occur because Defendants have received and will likely continue to receive money from consumers while deceiving consumers into believing that Defendants are investing their money. Further, irreparable harm will occur absent an injunction because the Defendants will likely dissipate the remaining investor funds upon hearing of the instant action. The public interest favors an injunction in this case because public policy favors protection against fraudulent investment schemes. Further, Plaintiff has no adequate remedy at law that would stop Defendants from engaging in the fraudulent activities alleged in this case.

6. In the event that notice of this Motion is given to Defendants, the funds provided by consumers and other evidence of the acts alleged herein may be removed, dissipated, or transferred, prejudicing Plaintiff's prosecution of this action and the ability to recover restitution for consumers.

[R]ule 1.610(a) requires a 'strong and clear' showing before a temporary injunction without notice may issue. To satisfy the Rule's mandate of establishing why notice should not be required, a plaintiff seeking an ex parte temporary injunction must demonstrate (1) how and why the giving of notice would

accelerate or precipitate the injury or (2) that the time required to notice a hearing would actually permit the threatened irreparable injury to occur. Examples of such a showing are where notice of a hearing will prompt a defendant to ... cause unsecured assets to be liquidated in the context of a fraudulent enterprise, or precipitate the disposal of the major asset *Smith v. Knight*, 679 So. 2d 359, 361-362 (4th DCA 1996) (internal citations omitted).

Plaintiff has met its burden in view of the diversion of money from consumers that has been detailed in the instant Motion and the accompanying Memorandum and Affidavits. Notice to the Defendants of the relief requested by this Motion and the accompanying disclosure of the evidence that Plaintiff has uncovered will provide the Defendants opportunity to divert money, dissipate assets, and perhaps depart from Florida with money that would otherwise have been beyond their control with the granting of the requested equitable relief. The granting of the requested equitable relief will also prevent future payments to the Defendants from consumers.

7. The Plaintiff requests the Court appoint a Receiver in this matter pursuant to Sections 517.191(2) and 501.207(3), Florida Statutes, to be paid for by the Defendants. The Receiver, or custodian, may be appointed to wind up and liquidate or to manage the business and affairs of the limited liability company. The Receiver may exercise all of the powers of the limited liability company, through or in place of its board of directors or officers or of its managers or members, to the extent necessary to manage the affairs of the corporation or limited liability company in the best interests of its creditors. Fla. Stat. § 608.4492.

If a Receiver is not appointed by this Court, consumers will suffer irreparable harm as Defendants will continue to have unfettered control over investors' funds to disburse said funds, as has occurred in the past, for the benefit of the Defendants and not for the benefit of investors. More than 500 persons have invested money in Botfly and it is foreseeable that other persons will continue to sign up as investors and provide even more money to Defendants if a Receiver is not appointed by this Court.

8. Pursuant to Fla. R. Civ. P. 1.610(b), Plaintiff, as an agency of the State of Florida, is not subject to the requirement of posting bond, and under the facts alleged herein, it is in the public interest to dispense with the requirements for same.

9. At this time, no effort to give notice to Defendants has been made because of the likelihood that Defendants will dissipate investor funds and assets purchased with investor funds if notified of this action. The Plaintiff shall notify Defendants by service upon them of the Motion, Order, and Affidavits filed in this case.

WHEREFORE, the Plaintiff moves that this Court grant equitable relief, without the requirement of bond, as follows:

1. Order the sequestration or freezing of all assets of Botfly L.L.C., David R. Lewalski, and Jon J. Hammill, including but not limited to personal and business bank accounts, offices, and the contents of such offices where the business of the Defendants has been conducted.

2. Enjoin Defendants Botfly L.L.C., David R. Lewalski, and Jon J. Hammill individually and by or through their spouses, trustees, agents, employees or other persons who act under, by, through or on behalf of either or all of them from engaging in violations of Fla. Stat. § 517.011 et seq., from violating Fla. Stat. § 501.201, et seq., and from accepting, receiving, or otherwise obtaining money from consumers for investment or loan purposes.

3. Enjoin Defendants Botfly L.L.C., David R. Lewalski, and Jon J. Hammill individually and by or through their spouses, trustees, agents, employees or other persons who act under, by, through or on behalf of either or all of them or the Defendants, from destroying, mutilating, concealing, altering, or disposing of, in any manner, any of the books, records, papers, computer disks, computer memory retention devices or the like, computers, documents,

correspondence, obligations or other property of the Defendants herein until further order of this Court.

4. Appoint a Receiver, pursuant to Sections 517.191(2) and 501.207(3), Florida Statutes, and Rule 1.620, Florida Rules of Civil Procedure, with the following powers to review the financial records of the Defendants, to manage the affairs of Botfly, L.L.C. and all other entities operated, controlled or otherwise associated with the Defendants' activities, which entities shall be deemed to be included in the term "Defendants" herein, and to ensure proper disposition of investors' funds, with the Receiver's fees to be paid by the Defendants. The Receiver shall be permitted to have access to any of the Defendants' business records and to any other records that may be seized by any law enforcement agency. The Receiver shall have the following duties, powers and authority.

The Receiver shall marshal, preserve, protect, maintain, manage and safeguard the assets of Defendants in a reasonable, prudent, diligent, and efficient manner. Property in the custody of the Receiver or property to which the Receiver has the right to custody shall not be subject to execution or similar process. The Receiver shall be vested with the usual powers and duties of equity Receivers in like cases, and is hereby authorized and instructed to take possession of and control over the Assets and, without limitation of any kind as to his general duties, the Receiver shall have at least the following specific duties and responsibilities:

a. Business Offices. The Receiver shall take possession of all of Defendants' assets, bank accounts, including but not limited to accounts at Bank of America, Fifth Third Bank, and Deutsche Bank, offices, and the contents of such offices where the business of Defendants has been conducted.

b. Revenues. Commencing immediately, the Receiver shall collect all receipts, revenues,

deposits, investments, receivables, notes and other sums generated by, from or due to Defendants. All sums marshaled shall be deposited with a state or federally chartered financial institution. Defendants shall immediately turn over to the Receiver any monies belonging to or otherwise generated from investors or Defendants' clients currently in their possession. Defendants shall refrain from any further solicitation of investments in Botfly or loans to Botfly from consumers. Any funds of Defendants received by any party shall be forthwith delivered to the Receiver without further Order of this Court. The Receiver shall have the exclusive right to pursue, collect and control all monies belonging to or otherwise generated by Defendants, and shall have the exclusive right to make payments and disbursements from Defendants' bank accounts, including rents, accounts payable, expenses, costs of merchandise or equipment, and payroll.

c. General Powers. The Receiver shall exercise all other powers and rights necessary to manage, protect and preserve the assets and the business of Defendants.

d. Cooperation: Defendants, and their officers, agents, partners, servants, employees and transferees shall cooperate fully with the Receiver and comply with the Receiver's requests for information, records and documentation so that the Receiver may perform his duties with full information and knowledge. Defendants, and their officers, agents, partners, servants, employees and transferees shall not interfere with or hinder the operations of the Receiver, but shall maintain their legal rights with respect to this action, the Receiver and the Receivership.

e. Possession of Property: The Receiver shall immediately take possession and control of all of the assets in the possession or under the control of Defendants whether such property is held by Defendants, beneficially or otherwise.

f. Bank Accounts. As the Receiver may deem necessary, and effective immediately upon

entry of this Order, the Receiver shall establish and maintain, at a bank or banks whose deposits are federally insured, operating accounts for the Receivership into which the Receiver shall deposit all receipts or revenues from Defendants. Amounts on deposit in all accounts, including but not limited to in a financial institution, brokerage account, investment account, and/or as a retainer previously paid and/or in bank accounts at Bank of America, Fifth Third Bank, and Deutsche Bank, of Defendants shall be transferred to the Receiver without further Order of this Court. All safety deposit boxes shall be transferred to the Receiver without further Order of this Court. The Receiver is authorized to disburse regularly and punctually (to the extent available), all amounts hereafter due and payable as reasonable, necessary and proper operating expenses of the Receivership, subject to the terms of this Court's Order.

g. Expenses. The Receiver shall pay from the estates of Defendants' funds the expenses incurred by him in the conservation, protection and management of the assets.

h. Maintenance of Assets. The Receiver shall enter into any and all service contracts reasonably necessary to keep, maintain and protect the assets.

i. Checks. The Receiver shall endorse all checks and drafts now or hereafter made payable to Defendants concerning such accounts receivables, deposits, rents, income, profits, and revenues.

j. Mail. The Receiver shall open all mail in connection with the assets or business(es) of Defendants.

k. Supplemental. The Receiver shall have all other duties, powers and authority as set forth in the Order of this Court

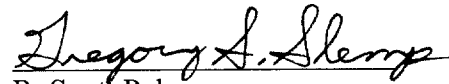
5. Order that no bond shall be required with respect to the relief requested herein as the Plaintiff, Office of the Attorney General, Department of Legal Affairs, State of Florida, is an

agency of the State of Florida and the public interest is served by this action.

6. Grant all other and further relief deemed just and proper by this Court.

IT IS HEREBY CERTIFIED that a true and correct copy of this Emergency Motion for Temporary Injunction without Notice and for Appointment of Receiver will be served with the Court's Order.

BILL McCOLLUM
Attorney General



R. Scott Palmer
Special Counsel
Florida Bar No. 220353
Gregory S. Slemp
Assistant Attorney General
Florida Bar No. 478865
Office of the Attorney General
PL-01; The Capitol
Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 488-9134