

**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,
and JON J. HAMMILL,**

Defendants.

**RECEIVER'S RESPONSE IN OPPOSITION TO JON HAMMILL'S
MOTION TO MODIFY THE TEMPORARY INJUNCTION AND
MOTION FOR ORDER DIRECTING RECEIVER TO RELEASE FUNDS FOR
REASONABLE LIVING EXPENSES AND ATTORNEYS' FEES**

Jon Hammill's request that his attorneys' fees and living expenses be paid from the little remaining of the tens of millions of dollars of the funds purloined from the defrauded Botfly investors should be denied. To date, the Receiver has verified that Hammill has received more than \$1.5 million from Botfly accounts. However, the Receiver's efforts to recover those assets as required by this Court have been consistently obstructed and opposed by Hammill. In particular, Hammill made wire transfers totaling at least \$283,500.00 to Deutsche Bank AG in 2009 and 2010. Yet, Hammill has not taken the steps to have the funds on deposit with Deutsche Bank AG turned over to the Receiver and has refused to answer questions about the account or accounts. Moreover, in violation of the orders of this Court, Hammill has refused to provide a financial statement, despite repeated requests that he do so. His brazen request for access to the

funds that the Receiver has been able to locate and recover to date, made without any intention of disclosing the financial assets presently under his control should be denied.

Jon Hammill's shameless request that the Court allow him recommence soliciting funds from the defrauded investors must also be rejected. Unless and until Hammill makes a complete and accurate disclosure of his finances and cooperates with the Receiver's efforts to safeguard those assets for the benefit of the investors, he is entitled to no relief from the temporary injunction.

FACTUAL AND PROCEDURAL BACKGROUND

1. On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida ("**OAG**") 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 loans with investors ("**Investors**"), promising payment of interest at the rate of ten percent (10%) compounded monthly, 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. The OAG sought and the Court granted, among other things, emergency relief against Botfly, Lewalski, and Hammill, freezing their assets, and appointing a receiver over the Defendants.

2. On April 1, 2010, the Court entered a temporary injunction (the "**Temporary Injunction**"), finding that the OAG demonstrated the requirements for establishing preliminary

injunctive relief under Florida law. The Temporary Injunction requires, among other items, “[t]he sequestration or freezing of all assets of Defendants” Temporary Injunction, ¶ 1. Further, the Temporary Injunction prohibits the “Defendants . . . from receiving directly or indirectly any money, property, or accounts from any investors or lenders.” Temporary Injunction, ¶ 4.

3. Additionally, by the Order Appointing Receiver (the “**Order**”) dated April 1, 2010, the Court appointed Michael E. Moecker (the “**Receiver**”) to be the Receiver of Botfly, Lewalski, and Hammill and all other entities operated, controlled or otherwise associated with the Defendants’ activities (collectively, the “**Receivership Entities**”). The Order provides, among other items, the following:

The Receiver . . . 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. Order, ¶ 4(b).

The Receiver shall maintain appropriate insurance for Defendants, its premises and/or its merchandise, if appropriate in the Receiver’s sole discretion. Order, ¶ 4(c).

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 Order. Order, ¶ 4(d).

Defendants, and their officers, agents, partners, servants, employees and transferees shall cooperate fully with Receiver and comply with Receiver’s requests for information, records and documentation so that Receiver may perform his duties with full information and knowledge. Order, ¶ 5.

4. Pursuant to the terms of the Order, the Receiver has taken possession and control of certain assets of the Receivership Entities. *See* Receiver’s Inventory Report of Inventory, Findings and Actions Taken From April 1, 2010 through April 21, 2010.

HAMMILL'S OBSTRUCTION OF THE RECEIVER'S RECOVERY EFFORTS

5. On April 2, 2010, employees of Moecker & Associates went to Hammill's residence to take custody of the assets of the Receivership entities as required by the Order Appointing Receiver. Hammill refused to permit entry into the residence. On April 7, with the authority of an order of the court allowing the Receiver to forcibly enter the premises if necessary, employees of Moecker & Associates gained access to the residence.

6. On April 16, 2010, Hammill appeared for a deposition as an agent of Botfly. At the deposition, Hammill invoked his privilege against self-incrimination as to testimony and production of documents. A transcript of the April 16 deposition has been filed in the case.

7. On May 21, 2010, the Receiver requested that Hammill's accountant provide the Receiver with financial information including tax return information. Hammill objected to the request for production and the matter is set for hearing on July 16.

8. On or about May 24, 2010, Hammill filed a Motion to Modify the Temporary Injunction and a Motion for Order Directing Receiver to Release Funds for Reasonable Living Expenses and Attorneys' Fees (collectively, the "**Motions**") seeking permission to recommence soliciting money from investors in the Ponzi scheme, and the release of the funds recovered by the Receiver for payment of his personal expenses and attorneys' fees.

9. Prior to filing the Motions, Hammill's counsel made several requests that the Receiver agree to relief from the injunction. In response to every such inquiry, the Receiver reminded Hammill of the obligation to provide financial information pursuant to the Order. No financial information was ever provided. See Composite Exhibit "A" attached to this motion.

10. After the Motions were filed the Receiver scheduled another deposition of Hammill to obtain financial information and to prepare for the hearing on the motions.

11. At the June 10, 2010, deposition, Hammill again refused to provide financial information, invoking the Fifth Amendment right against self-incrimination to almost every question posed relating to his assets, Botfly's assets, his activities with Botfly, and the receipt of funds from Botfly. A copy of the June 10 Deposition Transcript ("6/10 Tr.") has been previously filed in connection with the hearing on the Motions to demonstrate the substantial breath of Hammill's invocation of the Fifth Amendment and his utter lack of cooperation.

12. Hammill invoked the Fifth Amendment to questions regarding whether he knew any Botfly investors or if any of his family had invested in Botfly. 6/10 Tr. at 44. In addition, he invoked the Fifth Amendment with regard to whether he owned or possessed a motor vehicle, whether he knew David Lewalski, Melinda Colbeth, and Tom or Patricia Stead, whether he was familiar with Fairway Golf Carts, whether he had communicated with Botfly investors since the entry of the injunction, whether he had composed an email to the Botfly investors, whether he had access to email addresses for the Botfly investors, whether he had seen the temporary injunction or was aware of its provisions, whether he was aware that the temporary injunction prohibited him from receiving money from Botfly investors, whether he had received money from Botfly investors, whether he had retained a lawyer to represent him, whether the lawyer representing him had been paid,

13. In particular, at his deposition, Hammill invoked the Fifth Amendment as to the source of the funds deposited in the accounts that are the subject of his motion for the payment of his living expenses – the Wachovia accounts for Jon J. Hammill, P.A. (6/10 Tr. at pp. 22-23 and 28), Hammill's Bank of America account (*id.* at 26 -27), Hammill's Grow Financial Credit Union Account (*id.* at 29); and Hammill's E-Trade account (*id.*).

14. In addition, on the grounds of the right not to incriminate himself afforded by the Fifth Amendment, Hammill refused to disclose what assets Botfly or Hammill owned that were located outside of the United States. 6/10 Tr. at pp. 7-8.

15. On July 9, 2010, the bankruptcy trustee in the Chapter 7 bankruptcy case, examined Hammill under oath and asked his questions regarding his assets and his involvement with Botfly. Hammill was similarly uncooperative with the bankruptcy trustee, invoking the Fifth Amendment to every question relating to Botfly. In addition, he refused to give the bankruptcy trustee consent to obtain records regarding Hammill's account records from Deutsche Bank. However, Hammill did reveal that the last withdrawal he made from Deutsche Bank was on October 22, 2008. A transcript of the July 9 examination has been filed in this case.

HAMMILL'S CHAPTER 7 BANKRUPTCY PETITION

16. 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. Hammill's Chapter 7 bankruptcy petition is the subject of the motion for judicial notice filed by the Office of the Attorney General on July 14, 2010.

17. On the petition Hammill listed his employer as Tampa Bay Auto Sales and estimated his monthly salary as \$1,950.00.

18. Hammill listed himself as the President and sole owner of Jon J. Hammill, P.A., a real estate sales business that, according to Hammill had ceased operations in 2006.

19. In June 2009, the bankruptcy court entered a discharge.

HAMMILL'S RECEIPT OF BOTFLY FUNDS

20. Beginning in February 2008, Botfly paid Hammill approximately \$1,600,000, either directly or indirectly by way of payments to Jon J. Hammill, P.A. The funds were deposited in Hammill's Bank of America Account No. *****5458 until February 1, 2009. Thereafter, Botfly funds were deposited in the Wachovia account for Jon J. Hammill, PA, Account No. *****5195 and then transferred to Hammill's Bank of America account.

21. The Receiver has recovered \$35,740.55 from Bank of America account no. *****5458 and \$167,898.91 from Wachovia Account No. *****5195.¹ From at least February 1, 2009, until the entry of the Temporary Injunction, Botfly was the only source of income for deposits made in the Wachovia account and no legitimate source has been identified for the deposits made in Hammill's Bank of America during that time period.

22. On his Chapter 7 bankruptcy petition, Hammill did not disclose any investment interest in Botfly or the receipt of more than \$80,000 from Botfly during the one year period prior to the petition date.

HAMMILL'S OFF-SHORE WIRE TRANSFERS

23. Hammill opened an account or accounts at Deutsche Bank AG, a financial institution in England. Beginning in August, 2008, from time to time Hammill made wire transfers from his personal account at Bank of America (Acct. No.***** 5458) to Deutsche Bank. The last transfer was made on March 2, 2010 in the amount of \$49,000. During this twenty-month period, Hammill transferred a total of \$283,500 from Acct. No.***** 5458 to Deutsche Bank.

24. Two hundred and seventy-two thousand five hundred dollars (\$272,500) have been deposited in the account since October 22, 2008, when Hammill the last withdrawal was

¹ The assets in the ETrade and Grow Financial accounts have not yet been transferred to the Receiver's accounts.

made. Accordingly, it appears that a substantial amount of money remains at Deutsche Bank that should properly be brought within the Receivership estate.

25. From at least February 1, 2009, payments from Botfly, first deposited in the Wachovia account and then transferred to Bank of America Acct. No. *****5458, constituted substantially all of the funds deposited in the account. Of the transfers to Deutsche Bank from Bank of America Acct. No. *****5458, \$255,000 were made after February 1, 2009.

MEMORANDUM OF LAW

I. The standard for modifying a temporary injunction is not satisfied.

On April 1, 2010, the Court found that good cause existed to protect the funds in Hammill's personal bank accounts and that the OAG had demonstrated that it would likely prevail on its claims that Hammill made false statements to investors and misappropriated investor funds. Hammill has not challenged the factual or legal basis for the Court's findings in support of the Temporary Injunction and has not asserted any change circumstances since the its entry.

A court may modify a temporary injunction "when changed circumstances make it equitable to do so," and the purpose of a temporary injunction is "to preserve the status quo" pending final resolution of the case. *Brock v. Brock*, 667 So. 2d 310, 311 (Fla. 1st DCA 1995).

Hammill's inability to maintain his lavish lifestyle and pay attorneys' fees for his defense do not constitute changed circumstances warranting a modification of the Temporary Injunction as this does not present an item that has been overlooked by the Court or an item that the Court failed to consider when the Court imposed the asset freeze. *See generally id.* (holding, in the context of a temporary injunction freezing possible assets of an estate, that the circumstances had not been

altered in a manner that justified releasing possible assets of the estate). Since Hammill has not satisfied the standard for modifying the Temporary Injunction and the purpose of the Temporary Injunction is to maintain the *status quo* pending the outcome of the case, the Court should deny the Motions.

As of April 1, 2010, the OAG identified more than \$23 million that was misappropriated from Botfly from January 1, 2008 through February 28, 2010. Since the filing of the Complaint, the OAG has continued its investigation and the Receiver has commenced an examination of Botfly's financial records in an effort to identify assets recoverable for the Receivership Estate. The on-going investigation substantiates that the Ponzi scheme began prior to January 2008, and the amount paid by investors exceeds \$23 million. For example, in March 2010 more than \$4 million of investor funds was deposited in Botfly Bank of America Account No. *****5586.

Even if Hammill's liability is limited to amounts he received, the funds recovered from Hammill's accounts so far fall far short of covering his ill-gotten gains.² Hammill's liability under this theory would still approach \$1.6 million and the Receiver has only recovered approximately \$200,000 of that amount from Hammill's personal bank accounts. Accordingly,

² The OAG may seek recovery of the entire amount of ill-gotten gains from Hammill under a theory of joint and several liability. Numerous courts have upheld a freeze to preserve assets for equitable remedies. *United States ex rel Rahman v. Oncology Assoc.*, 198 F.3d 489, 494-99 (4th Cir. 1999) (asset freeze appropriate in case brought by U.S. government under the federal False Claims Act to preserve assets for equitable remedy of unjust enrichment); *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002) (upholding district court's imposition of an asset freeze over all defendants' personal and business assets because plaintiff sought equitable remedy of profit disgorgement); *In re Focus Media, Inc.*, 387 F.3d 1077, 1084-85 (9th Cir. 2004) (upholding bankruptcy court decision to issue preliminary injunction freezing assets to preserve defendant's assets in action alleging equitable causes of action such as fraudulent conveyance and constructive trust); *Comcast of Illinois X, LLC v. Till*, 293 F.Supp.2d 936, 942 n.9 (E.D. Wisc. 2003) (granting *ex parte* order barring defendants from disposing of any assets because the freeze was to preserve assets for the equitable remedy of profit disgorgement); *Trafalgar Power Inc. v. Aetna Life Ins. Co.*, 131 F.Supp.2d 341, 349-50 (N.D.N.Y. 2001) (district court may grant asset freezes or like relief in cases involving equitable remedies); *Fairview Machine & Tool Co. v. Oakbrook Int'l, Inc.*, 77 F.Supp.2d 199, 201-206 (D. Mass 1999) (granting injunction freezing assets to potentially satisfy equitable remedies of unjust enrichment and restitution); *Slidell, Inc. v. Millennium Inorganic Chemicals, Inc.*, No. CIV A. 02-213, 2002 WL 649086 at *3 (D. Minn. April 17, 2002), (district court issued preliminary injunction preserving assets in case seeking equitable remedies of constructive trust and equitable lien); *FTC v. Windermere Big Win Int'l*, No. 98 C 8066, 1999 WL 608715 at *3 n.2 (N.D. Ill. Aug. 5, 1999) (issuing asset freeze against defendants in FTC action to insure that assets were available for restitution, an equitable remedy).

Hammill's potential liability far exceeds the funds held by the Receiver. For this reason, Hammill request that funds derived from the Ponzi scheme be paid in preparation of his legal defense and for his support should be denied.

II. The Order does not require that the Receiver release funds for Defendant Hammill's personal living expenses or attorneys' fees.

Hammill misstates that the Order requires the Receiver to make certain payments and disbursements for hiss personal living expenses. Paragraph 4(b) of the Order provides that "[t]he Receiver . . . 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." This language of the Order does not require the Receiver pay for Hammill's personal living expenses, rather the Order grants to the Receiver, and no other party, the exclusive right to make disbursements from Hammill's bank accounts if any disbursements are in fact warranted, which in the instant case they are not. Paragraph 4(c) of the Order provides that "[t]he Receiver shall maintain appropriate insurance for Defendants, its premises and/or its merchandise, if appropriate in the Receiver's sole discretion." The express language of the Order provides that payments for insurance are within the sole discretion of the Receiver. Thus, the Receiver does not have a mandatory obligation to make payments for Hammill's personal insurance expenses. In any event, the car that the Receiver recovered from Hammill is insured under a policy obtained by the Receiver. No other insurance is needed. Paragraph 4(d) of the Order provides that "[t]he 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 Order." This explicit language of the Order authorizes the Receiver to make disbursements for operating expenses of the Receivership; the Order does not impose an affirmative obligation on the Receiver to make

payments and disbursements for Hammill's personal living expenses. The Order does not require that the Receiver release frozen funds to pay for Hammill's personal living expenses or to pay for Hammill's attorneys' fees in defending this action.

III. Hammill is not entitled to the release of funds to pay for his personal living expenses and his attorneys' fees.

The Motions should be denied because the Investors' interests would not be served by an order modifying the Temporary Injunction or by an order releasing the funds for the payment of Hammill's personal living expenses and attorneys' fees. *See generally* 44 Fla. Jur. 2d Receivers § 43 (providing that a receiver holds or preserves property for the benefit of those ultimately entitled to the property) (citing Am. Jr. 2d Receivers § 84).

In the Motion For Order Directing Receiver to Release Funds For Reasonable Living Expenses And Attorneys Fees, Hammill states that in early 2009 he was hired by Lewalski as an independent contractor to handle administrative duties and that all money he received from Botfly was paid as salary. Attorney Fee Motion at ¶¶ 12, 13. Contrary to the assertion in the Attorney Fee Motion that "at no time did Hammill believe that he was working for a Ponzi scheme," Attorney Fee Motion at ¶ 14, Hammill has consistently refused to discuss his role in Botfly asserting his constitutional right not to incriminate himself.

Hammill was responsible for soliciting investors in Botfly, communicated with investors regarding Botfly's activities, signed promissory notes issued by Botfly, and, in furtherance of the Ponzi scheme, wrote checks to investors from Botfly Bank of America Acct. No. *****7089. On April 16, 2010, Hammill appeared for deposition as an agent of Botfly and invoked his constitutional right against self-incrimination as to everything related to Botfly including his involvement at the company, participation in events and receipt of money. April 16 Transcript at 5. Even if the Court were to credit Hammill's assertions of ignorance as to the

Ponzi scheme, in proving fraud, intentional misconduct can be established by showing that Hammill was “reckless or careless as to the truth of the matter asserted.” *Ocean Bank of Miami v. Inv-Uni Inv. Corp.*, 599 So. 2d 694 (Fla. 3d DCA 1992).

In considering motions to use frozen assets for attorneys’ fees, courts typically and properly place the investors’ interests over those of the defendants in the case. The Court should deny Hammill’s request to modify the asset freeze for purposes of paying his attorneys’ fees as courts have consistently held that such use of frozen funds is disallowed. In *SEC v. Comcoa, Ltd.*, the court refused to modify an asset freeze to allow payment of attorneys’ fees, indicating that the use of frozen assets for payment of attorneys’ fees has been disallowed in extreme circumstances such as civil forfeiture and criminal violations. 887 F. Supp. 1521 (S.D. Fla. 1995) (providing that “[i]n imposing a freeze of assets, there is no requirement that the court exempt sufficient assets for the payment of legal fees” and that “the courts have essentially held that a defendant has no right to spend another’s money for services rendered by an attorney, even if those funds are the only way that the defendant will be able to retain counsel of his choice”). *See also SEC v. Roor*, 1999 WL 553823 (S.D.N.Y. 1999) (noting that income derived from alleged violations of the securities laws cannot be used to pay for attorneys’ fees); *SEC v. Bremont*, 954 F. Supp. 726 (S.D.N.Y. 1997) (providing that “[j]ust as a bank robber cannot use the loot to wage the best defense money can buy, so a swindler in securities markets cannot use the victims’ assets to hire counsel who will help him retain the gleanings of crime”) (quoting *SEC v. Quinn*, 997 F.2d 287, 289 (7th Cir. 1993)); *SEC v. Coates*, 1994 WL 455558 (S.D.N.Y. 1994) (stating that “[a] defendant is not entitled to foot his legal bill with funds that are tainted by his fraud”).

The case law discussed above does not require a release of investor assets to pay for Hammill's defense, and it would be unfair to order payment of Hammill's attorneys' fees using the frozen assets of the Investors. As discussed, the Receiver asserts that Hammill is not entitled to the release of funds for his attorneys' fees. However, Hammill fails to provide evidentiary support showing the amount of attorney's fees he seeks, which is yet another reason for denying Hammill relief from the Temporary Injunction.

IV. Defendant Hammill is prohibited from requesting the relief in the Motions under the unclean hands doctrine.

A party who comes in equity "must come with clean hands else all relief will be denied him regardless of the merit of his claim." *Roberts v. Roberts*, 84 So. 2d 717, 720 (Fla. 1956). *See also Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) (providing that a cardinal rule of equity is "he who comes into equity must come with clean hands" and "[i]t is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief"). Hammill has willfully failed to provide financial information and turnover assets in violation of the very same order of which he now seeks an equitable modification for his own benefit. Hammill has knowingly, willingly and intentionally obstructed the Receiver and refused to cooperate, both individually and as an agent of Botfly, with the Receiver and refused to comply with the Receiver's repeated requests for information, records and documentation pursuant to the terms of the Order. Hammill's unclean hands prohibit him from any attempt to seek relief from the Court's equitable asset freeze order. *See generally SEC v. Lauer*, 445 F. Supp. 2d 1362 (S.D. Fla. 2006) (providing that defendant's unclean hands closed the door on any attempt by defendant to seek relief from the court's equitable asset freeze order).

At his deposition on April 16, 2010, Hammill invoked his privilege against self-incrimination as to testimony and production of documents under the Fifth Amendment. *See* Hammill's Deposition Transcript, p. 5. A trial court is entitled to draw an adverse inference against a party in a civil action when the party invokes his or her privilege against self-incrimination under the Fifth Amendment. *Vasquez v. State*, 777 So. 2d 1200, 1203 (Fla. 3d DCA 2001) (citing *Baxter v. Palmigiano*, 425 U.S. 308 (1976); *Atlas v. Atlas*, 708 So.2d 296, 299 (Fla. 4th DCA 1998). *See also SEC v. Bremont*, 954 F. Supp. 726, 733 (S.D.N.Y. 1997). Additionally, the custodian of entity records cannot object to their production on grounds of self-incrimination under the Fifth Amendment. *See Delisi v. Smith*, 423 So. 2d 934, 940 (Fla. 2d 1982) (providing that the custodian of corporate and partnership records "cannot object to their production on grounds of self-incrimination even when the corporation or partnership is a small or closely held business and the records custodian is an officer, director or partner who might be implicated in the criminal activity by virtue of the content of the records"). Since an adverse inference of guilt in the instant case can be made against Hammill as discussed and since Hammill, as an agent of Botfly, had no basis to object to production of Botfly's documents at the deposition, Hammill has acted with unclean hands in the instant case, barring him from seeking equitable modification of the Temporary Injunction and Order for his own benefit. *See generally Roberts v. Roberts*, 84 So. 2d 717, 720 (Fla. 1956); *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945).

CONCLUSION

The law does not entitle Hammill to continue to avail himself of the use of the proceeds of the fraud that he perpetrated with Lewalski through Botfly. The asset freeze is to preserve the funds and assets for a potential return to defrauded investors. Hammill does not have any

entitlement to use the funds. Moreover, the Court should not even consider his request where Hammill refused to allow the Receiver to have access to his premises in contravention the Order appointing Receiver, has refused to provide meaningful financial disclosure, has objected to the Receiver's efforts to obtain financial information from other sources, and has availed himself repeatedly of the Fifth Amendment's protection against self-incrimination even with respect to preliminary questions regarding his involvement with Botfly.

Since Hammill has not satisfied the standard for modifying a Temporary Injunction, the Order does not require the requested relief in the Motions, Hammill is not entitled to a release of frozen funds to pay for his personal living expenses or his attorneys' fees, and Hammill has acted with unclean hands, the Court should deny the Motions. Additionally, the Court should require that Hammill disclose the amount paid to Cohen, Foster & Romaine, P.A., if any, for its legal service and the source for the payment. As to the request that the injunction be modified to allow payment of legal fees by family and friends, any such modification should be conditioned on disclosure to the Court, the Office of the Attorney General and the Receiver of the source for and amount of any payment made for legal services and an affirmative showing that the funds can not be traced, directly or indirectly, to funds received from Hammill, Lewalski or Botfly, LLC.

WHEREFORE, the Receiver respectfully requests that this Court enter an order (a) denying the Motions and (b) granting such other and further relief as this Court deems just and proper.

Dated: Tampa, Florida
July 15, 2010

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 15th day of July, 2010 a true and correct copy of the foregoing has been furnished via regular U.S. Mail and/or electronic transmission as noted to the following:

David R. Lewalski,
as Registered Agent of Botfly, LLC
2515 Southwest 35th Place, Apt. #112
Gainesville, Florida 32608

David R. Lewalski, Individually
2515 Southwest 35th Place, Apt. #112
Gainesville, Florida 32608

Jon J. Hammill
Via Electronic Transmission
jonhammil@yahoo.com

R. Scott Palmer, Esq.
Gregory S. Slemper, Esq.
PL-01: The Capitol
Tallahassee, Florida 32399-1050

Karen Cox

Attorney

Composite Exhibit “A”

From: Karen Cox
Sent: Friday, April 16, 2010 2:47 PM
To: 'tfoster@tampalawfirm.com'
Subject: OAG v. Botfly

Attachments: Temporary Injunction - Botfly.pdf; Order appointing receiver - Botfly.pdf.pdf; BRDOCS-#766192-v1-Botfly_Financial_Disclosure_Statements.pdf
Todd,

It was a pleasure seeing you this morning. We represent Michael Moecker, the Receiver of Botfly LLC, David R. Lewalski and Jon J. Hammill. As your firm will be representing Botfly LLC, I am delivering to you via this email the Order Appointing Receiver and Temporary Injunction that were entered on April 1, 2010. I am also sending you the pertinent financial disclosure form for Botfly.

You will note that pursuant to the temporary injunction the assets of Botfly LLC, as well as the assets of Mr. Hammill and Mr. Lewalski are frozen and they and their agents and their agents are enjoined from alienating their bank accounts until further order of the court.

You will note that pursuant to the order appointing receiver, all persons or entities, including attorneys, in possession of Botfly's assets must surrender them to the Receiver without further order of the court.

In addition to expedited discovery provided for the Receiver, each defendant is required to provide a complete and accurate financial statement within three business days. Accordingly, we expect that the attached financial disclosure statement will be returned with the requested documents no later than April 21.

Further, Botfly must provide a full accounting of all funds, documents and assets located outside of the US that are owned by the the defendants, held for the benefit of the defendants, or under the Defendants' direct or indirect control, (2) must transfer such assets to the State of Florida and provide the Receiver with access to the assets. The required accounting is due on April 23.

We will depose a corporate representative next Friday. Please advise of whether you have any objection to having the deposition conducted at Bush Ross.

I look forward to working with you on this matter,

Karen Cox

From: Karen Cox
Sent: Thursday, April 22, 2010 5:31 PM
To: 'tfoster@tampalawfirm.com'
Subject: Botfly - Reply to fax from Foster received from 8132251921 on 4/22/2010 at 5:03:04 PM.

Attachments: Receiver's receipt - Hammill.pdf; BRDOCS-#766192-v1-Botfly_Financial_Disclosure_Statement - Hammill.pdf; Fax-Apr-22-2010-17-03-04-0224.pdf

Todd,

In response to the fax below. I have been meaning to send the receipt to Mr. Hammill, but will now forward it to you.

When will you be filing a notice of appearance?

Also, Mr. Hammill's financial disclosure is overdue. Please advise when you will provide the information. For your convenience, I am forwarding you the form.

I will check on your inquiry as to other Bank of America accounts. The ones listed on the report are the only ones that I am aware of.



Receiver's receipt - BRDOCS-#766192-Hammill.p...



v1-Botfly_Finan...

From: the mailroom
Sent: Thursday, April 22, 2010 5:04 PM
To: Karen Cox
Subject: Fax was received from 8132251921 on 4/22/2010 at 5:03:04 PM.

The attached fax was received from 8132251921 on 4/22/2010 at 5:03:04 PM

Test fax routing multiple assistants below:

Fax Sent To: kcox@bushross.com mmayott@bushross.com



Fax-Apr-22-2010-17-03-04-0224....

JobID: 132957

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Karen Cox

From: Karen Cox
Sent: Wednesday, May 19, 2010 3:31 PM
To: 'Michael A. Gold'
Subject: RE: AG of Florida v. Botfly, et al, Case No. 51-2010-CA-2912-WS/G

Attachments: OAG v. Botfly.htm; Order appointing receiver - Botfly.pdf.pdf; BRDOCS-#766192-v1-Botfly_Financial_Disclosure_Statements.pdf; BRDOCS-#766192-v1-Botfly_Financial_Disclosure_Statements.pdf



OAG v. Botfly.htm
(7 KB)



Order appointing
receiver - Bo...



BRDOCS-#766192- BRDOCS-#766192-
v1-Botfly_Finan...



BRDOCS-#766192- v1-Botfly_Finan...

Michael,

I haven't spoken to Moecker yet on this request but plan to do so tomorrow. However, as I advised Michael Rubinstein, Mr. Hammill has refused to make the financial disclosures that he was ordered to provide to the Receiver. I forward the Financial Disclosure Forms applicable to Hammill and to Hammill as the corporate representative of Botfly as attachments to this email. They were served on Mr. Hammill long ago and I specifically brought the disclosure requirement to Todd's attention on April 16. Is it your position that we should take it on faith that Hammill needs relief from the injunction when he refuses to make court-ordered disclosures as to the nature and source of his income and assets?

Without such a disclosure there is no chance that the Receiver would agree to the relief requested. Let me know whether we can expect compliance with the Receivership Order and then we can have a serious discussion regarding whether the relief you seek is appropriate.

Regards,

Karen Cox, Esq.
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-----Original Message-----

From: Michael A. Gold [mailto:mgold@tampalawfirm.com]
Sent: Monday, May 17, 2010 5:23 PM
To: Karen Cox
Cc: Todd A. Foster
Subject: AG of Florida v. Botfly, et al, Case No. 51-2010-CA-2912-WS/G

Dear Ms. Cox:

Todd Foster asked me to forward the attached draft motions. The first is a Motion to Modify the Injunction to allow Mr. Hammill to receive money from friends and family. The second is a Request for monthly living expenses. These are merely drafts and we may, in fact, combine the two motions before filing them with the court.

Please review the motions and let us know whether the receiver will agree or object to the relief requested.

Regards,

Michael A. Gold, LL.M.

Karen Cox

From: Karen Cox
Sent: Wednesday, May 19, 2010 5:38 PM
To: 'Michael A. Gold'
Subject: RE: AG of Florida v. Botfly, et al, Case No. 51-2010-CA-2912-WS/G

It is not a matter of agreeing to provide the disclosures. He has been court-ordered to do so. The financial disclosures will provide the Receiver with a context to review the request. In the last several years Mr. Hammill obtained a substantial amount of Botfly money. The Receiver is entitled to know how the funds were expended and whether any recovery can or should be made of transfers of the funds. Mr. Hammill's decision to cease his obstruction of the Receiver's request is not a reason to give him relief from the injunction. His continued refusal to comply with the reasonable request of an officer of the court that he comply with the court's order, however, provides a substantial basis for the court to deny him any relief from the injunction.

Regards,

-----Original Message-----

From: Michael A. Gold [mailto:mgold@tampalawfirm.com]
Sent: Wednesday, May 19, 2010 4:14 PM
To: Karen Cox
Subject: RE: AG of Florida v. Botfly, et al, Case No. 51-2010-CA-2912-WS/G

Karen,

I haven't discussed the issue with Todd yet, but if Mr. Hammill agrees to provide the financial disclosures, will you consent to a release of funds?

Regards,

Michael A. Gold, LL.M.

-----Original Message-----

From: Karen Cox [mailto:kcox@bushross.com]
Sent: Wednesday, May 19, 2010 3:31 PM
To: Michael A. Gold
Subject: RE: AG of Florida v. Botfly, et al, Case No. 51-2010-CA-2912-WS/G

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Regards,

Michael A. Gold, LL.M.

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