

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

**Defendants.**

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**RECEIVER'S INITIAL REPORT OF INVENTORY,  
FINDINGS AND ACTIONS TAKEN  
FROM APRIL 1, 2010 THROUGH APRIL 21, 2010**

**BUSH ROSS, P.A.  
Jeffrey W. Warren  
Karen Cox, Esq.  
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dlb

## INTRODUCTION

Botfly, LLC, is a Florida limited liability company (“**Botfly**”) which was formed in 2005. Beginning in at least January 2008, Botfly solicited loans from investors in the State of Florida and throughout the United States (the “**Investors**”) promising payment of interest at the rate of 10% compounded monthly. Botfly advised the Investors that the funds transferred to Botfly would be invested in a foreign currency exchange market. Hundreds of persons and entities have been identified as having made loans to Botfly.

On April 1, 2010, the Office of the Attorney General, Department of Legal Affairs, State of Florida (“**OAG**”) filed a complaint against Botfly, David R. Lewalski (“**Lewalski**”), and Jon J. Hammill (“**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 Botfly was utilized by Lewalski and Hammill to perpetrate a Ponzi scheme and that the funds obtained from the Investors were principally used for Lewalski and Hammill’s personal benefit and were not invested in the foreign currency exchange market as represented.

### **I. LEGAL PROCEEDINGS – APPOINTMENT OF RECEIVER**

The OAG commenced investigations into the Defendants’ activities and filed the instant action seeking entry of an injunction, appointment of a receiver to protect the interests of the victims of the fraud and other ancillary relief. By Order dated April 1, 2010 (“**Receivership Order**”), the Court appointed Michael E. Moecker to be the Receiver of Botfly LLC, David R. Lewalski, and Jon J. Hammill and all other entities operated, controlled or otherwise associated with the Defendants’ activities (collectively, the “**Receivership Entities**”). The Court also entered a preliminary injunction.

Immediately after appointment, the Receiver engaged Moecker & Associates to assist in the performance of his duties. The Receiver also engaged the law firm of Bush Ross, P.A., and its attorneys Jeffrey W. Warren and Karen Cox to serve as his counsel and provide the legal services necessary to properly perform his duties.

This initial report provides to the Court: (1) an inventory of property presently under the Receiver's control or possession pursuant to his appointment; (2) a synopsis of the Receiver's actions to date; and (3) an overview of the Receivers' ongoing efforts to discharge his duties to marshal, preserve, protect, maintain, manage and safeguard the assets of the Receivership Entities.

As required by Rule 1.620(b), Fla. R. Civ. P., and the Receivership Order, the Receiver will file additional periodic reports to update interested parties on all material developments in the receivership every 120 days.

## **II. INVENTORY OF PROPERTY IN THE CUSTODY OF THE RECEIVER**

Among other things, the Receivership Order mandates that the Receiver "take possession of all Assets, bank accounts, offices and the contents of such offices where the business of Defendants has been conducted." In discharge of this responsibility, the Receiver sent agents to four locations in Pinellas, Pasco and Alachua County identified as having been utilized by the Receivership Entities on April 2, 2010. The Receiver's investigation later developed additional addresses and the Receiver secured the property at those locations that were subject to the Receivership Order. In addition, the Receiver has taken possession of certain bank accounts of the Receivership Entities.

**A. Locations for the Receivership Entities.**

1. 10249 Clocktower Dr., Bayonet Point: This address is listed as the principle business address for Botfly with the Florida Department of State (the “**Principle Business Address**”). It is believed that the Principle Business Address is the residence of Lewalski’s mother, Mrs. Kathleen Lewalski. On April 2, 2010, Mrs. Lewalski refused to grant access to the Principle Business Address after the Receivership Order was delivered to her. The Receiver sought and obtained an Order requiring law enforcement to accompany the Receiver to the Principle Business Address and, if necessary, to use the force of the County to break and enter the Principle Business Address (the “**First Break Order**”) on April 6, 2010, and entered and searched it on April 7. No assets belonging to the Receivership Entities were identified or recovered at the Principle Business Address.

2. 5745 S.W. 75<sup>th</sup> Street, #275, Gainesville: This address is listed as a mailing address for Botfly with the Florida Department of State (the “**Mailing Address**”). It was discovered to be a rental mailbox in a UPS store in the name of Botfly, LLC. On April 2, the Receivership Order was delivered to the manager of the UPS store and the Receiver’s agents took possession of the mail and made arrangements for forwarding incoming mail.

The mail delivered to the Mailing Address after the Receivership Order included a cashiers check in the amount of \$18,000 made payable to Botfly. The Receiver is holding the check and will attempt to determine the reason for the payment.

3. 2684 70<sup>th</sup> Ave., S, St. Petersburg: This address is believed to be Hammills residence (“**Hammill’s Address**”). On April 2, 2010, Hammill refused to grant access to the property after the Receivership Order was delivered to him. Subsequently, after obtaining the First Break Order, the Receiver recovered certain assets from Hammill’s Address. No business

records were recovered at Hammill's Address and Hammill stated that he had none. The recovered assets are more particularly described on Exhibit "A" filed under seal pursuant to the First Break Order.

4. 2515 S.W. 35<sup>th</sup> Pl., #112, Gainesville: This address was believed to be Lewalski's residence. It was discovered that the apartment was no longer occupied by Lewalski and neither the current occupant nor the landlord had any knowledge of Lewalski's location.

5. 4813 S.W. 91<sup>st</sup> Dr., Gainesville: This location is a townhouse with a room above the garage and appears to have been utilized by Botfly for its business activities and by Lewalski for his residence (the "**Gainesville Business Address**"). According to the landlord, rent for the Gainesville Business Address has been paid through February 2011. When the Receiver's agents went to the location on April 13, 2010, it was unoccupied and the agents were informed that Lewalski had not been to the location for approximately ten days. A note stating "shredded" was found on the ground outside of the townhouse. After attempts to reach the landlord to obtain access to the Gainesville Business Address were unsuccessful, the Receiver obtained the Order granting Second Motion for Entry of Break Order (the "**Second Break Order**") and secured the Gainesville Business Address on April 14, 2010. No business records were located in the search of the Gainesville Business Address although there were several empty filing cabinets and a desk with file drawers. The assets recovered from the is location are more particularly described on Exhibit "B" filed under seal pursuant to the Second Break Order.

6. 4100 S.W. 41<sup>st</sup> Blvd., #5, Gainesville: Lewalski appeared to utilize an office in the office park on 41<sup>st</sup> Street in Gainesville (the "**Office Park Unit**") to conduct business activities. Lewalski leased a unit in the name of Botfly. Its small office was furnished with office furniture. The attached garage housed a 2008 Ferrari and two motorcycles, a new

television, and mechanic's tools. The Receiver recovered a safe from the Office Park Unit. The safe contained keys to two automobiles.

7. 6505 W. Archer Road, Suites 0-330 and 6-002, Gainesville: Lewalski appeared to utilize two units within a storage facility on Archer Road in Gainesville (the "**Storage Facility Units**") to store assets belonging to the Receivership Entities. The Receiver has taken possession of the items in the Storage Facility Units and will examine them to determine whether they reveal any additional information material to locating and recovering assets pursuant to the Receivership Order.

**B. Bank Accounts of the Receivership Entities.**

Notice of the entry of the Preliminary Injunction has been provided by the OAG or the Receiver to all known banks or depositories of the Receivership Entities. Certain bank accounts which had funds on deposit have transferred the funds to the Receiver as required by the provisions of the freeze certain bank accounts of the Receivership Entities and caused banks to transfer approximately \$3.5 million from accounts of the Receivership Entities to the Receiver.

The funds recovered from the bank accounts are more particularly described on Exhibit "C" attached hereto and incorporated herein. In total, the Receiver has recovered \$3,505,719.27 from bank accounts of the Receivership Entities.

**C. Other Assets of the Receivership Entities:**

On March 28, 2010, Botfly sent payment of approximately \$150,000 for the purchase of a 2010 Porsche from a car dealership in New Jersey. The car had not been delivered because a Florida title had not yet been obtained. The Receiver has requested that the car dealership return the funds and void the transaction and will take appropriate action to recover the funds if the dealership refuses to do so.

The Receiver has also discovered that Lewalski invested \$175,000 of Botfly's funds to purchase 50 shares of corporate stock for a newly-opened restaurant in Gainesville named Limerock Road. The corporation has been given notice of the Receivership Order and the Receiver's interest in the stock and advised that any distributions should be made to the Receiver.

Public records reflect that a 2008 Toyota Tundra and a 2010 Land Rover are registered to Botfly. These vehicles have not been located.

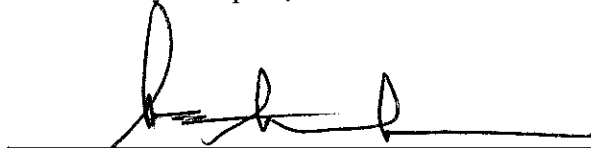
Using information developed from the investigation to date and in the Receiver's ongoing investigation of the nature, extent and location of the assets of the Receivership Entities, the Receiver will continue to discharge his responsibilities under the Receivership Order. Analysis of bank records for the Receivership Entities' accounts and of data recovered from computer equipment is expected to lead to additional recoveries. Whether the Receiver possesses causes of action for transfers made by the Receivership Entities is an issue that will be addressed once the Receiver completed a review of such transfers.

**D. Liabilities.**

The Receiver has not identified any litigation pending against the Receivership Entities. The Receiver expects that Investors will assert claims, although the Receiver has no information that any claims have been asserted yet.

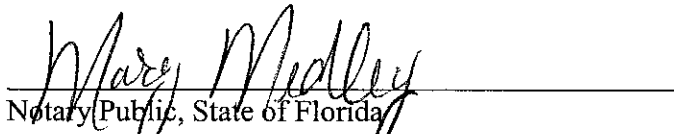
The Receiver is in the process of creating a website for the Receivership. The Receiver will update the website periodically to provide current information regarding the progress of the case and the status of the Receivership

In witness whereof, the undersigned, Michael Moecker, hereby files this Initial Report of Inventory, Findings and Actions Taken from April 1, 2010 to April 20, 2010 with the Honorable Stanley R. Mills, Circuit Court Judge of the Sixth Judicial Circuit in and for Pasco County, Florida, and declare under penalty of perjury and under the laws of the United States that the foregoing statements are true and correct on this 20th day of April, 2010.



Michael Moecker  
P.O. Box 1757  
Mt. Dora, Florida 32756

Sworn to and subscribed before me this 20th day of April, 2010 by Michael Moecker, who is personally known to me or who produced Florida Dk as identification.



Notary Public, State of Florida



Printed name: Mary Medley

My Commission expires: 8-15-11

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 21st day of April, 2010 a true and correct copy of this Receiver's Initial Report Of Inventory, Findings And Actions Taken From April 1, 2010 Through April 21, 2010 has been mailed to the following addresses:

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

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

Todd Foster, Esq.  
Cohen, Foster & Romine, P.A.  
201 E. Kennedy Blvd., Suite 1000  
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R. Scott Palmer  
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PL-01: The Capitol  
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William H. Bryan, III  
Pineyro Law Firm  
1611 N. Main Street  
Kissimmee, Florida 34744

Jon J. Hammill  
2684 70th Avenue South  
St. Petersburg, Florida 33712

David R. Lewalski  
c/o Melinda Lee Colbeth  
160 Central Park S.  
Apartment 1801  
New York, New York 10019-1502

*Karen Cox*

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Karen Cox

**Exhibit "A"**

Filed under separate seal pursuant to Court order

**Exhibit "B"**

Filed under separate seal pursuant to Court order

### Exhibit "C"

<b>Bank</b>	<b>Account</b>	<b>Date Opened</b>	<b>Recovery Amount</b>
<b>Bank of America</b>			
Business Interest Maximizer Botfly, LLC	# 898026895540	Jul-09	\$286,973.17
Business Economy Chkg Botfly, LLC	# 003670155586	Jan-07	\$2,511,075.83
Withdrawal Acct. Botfly, LLC	# 898024417098	Aug-09	\$85,886.93
Expense Acct. Botfly, LLC	# 229022037434	Jun-09	\$145,176.10
Interest Chkg Jon J Hammill	# 004430252851	Nov-05	Closed on 02/08/09
Regular Chkg Jon J Hammill	# 003768755458	Dec-04	\$35,740.55
Regular Chkg David R Lewalski	# 229003886691	Feb-07	\$17,950.81
David R. Lewalski	# 898013241660		\$128,699.21
<b>Florida Citizens</b>	# 202200004192		\$294,216.67
<b>TOTAL</b>			<b>\$3,505,719.27</b>