

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 17-cv-774-J-32MCR

Commodity Futures Trading Commission,

Plaintiff,

v.

Jason B. Scharf (d/b/a Citrades.com and
AutoTradingBinary.com); CIT Investments
LLC; Brevspand EOOD; CIT Investments
Ltd; A&J Media Partners, Inc.; Michael
Shah; and Zilmil, Inc.,

Defendants.

RECEIVER'S EIGHTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the "Receiver") in the above-captioned enforcement action, submits his Eighth Status Report setting forth his activities and efforts to fulfill his duties under the orders pursuant to which he was appointed for the six-month time period of August 1, 2019 through January 31, 2020 (the "Reporting Period").

I. INTRODUCTION

During this Reporting Period, the Receiver and his professionals focused on:

- A. Marshalling and preserving the assets of the Defendants, including (i) tracing the funds of Zilmil, Inc. to various accounts and assets Defendant Shah was claiming were exempt from the Receivership, and (ii) completing the liquidation and/or transfer to the Estate of all known assets and funds of the Zilmil Defendants¹ that had not yet been transferred to the Estate to maximize

¹ Consistent with the Receiver's prior Status Reports, Defendants, Michael Shah and Zilmil, Inc., collectively, shall be referred to herein as the "Zilmil Defendants." Defendant Jason B. Scharf, who was doing business as Citrades.com and AutoTradingBinary.com, and Defendants CIT Investments LLC, Brevspand EOOD, CIT Investments Ltd., A & J Media Partners, Inc.,

the funds from which distributions will be made pursuant to the Court-approved claims process;

- B. Pursuing recovery claims against relatives, insiders, affiliates and third parties who received transfers from the Zilmil Defendants without providing reasonably equivalent value;
- C. Refining the list of potential claimants to which notice would be sent in the Court-approved claims process and preparing the online portal and claim form to which potential claimants would be directed to participate in the claims process and submit their claims; and
- D. Performing various administrative tasks, including without limitation preparing and filing the seventh status report and seventh fee application.

II. THE RECEIVER'S ACTIVITIES AND EFFORTS DURING THE REPORTING PERIOD

A. Marshalling and Preserving Defendant' Assets

i. Zilmil Defendants' Accounts and Assets

Prior to this Reporting Period, the Receiver had identified, frozen, monitored, and/or recovered funds of the Zilmil Defendants in excess of \$9.2 million, of which more than \$6 million was transferred to the Receiver's fiduciary accounts, and approximately \$3.2 million remained frozen in foreign, investment, joint, and/or potentially exempt accounts at various financial institutions. During the Reporting Period, of that \$3.2 million not yet transferred to the Estate, the Receiver recovered and deposited into his fiduciary account for the Zilmil Defendants

collectively, shall be referred to herein as the "Citrades Defendants." The Zilmil Defendants and the Citrades Defendants, collectively, shall be referred to herein as the "Defendants."

Further, the Court's August 9, 2017 Consent Order for Preliminary Injunction, appointing Mr. Murena as a Permanent Receiver over Jason Scharf, A & J Media Partners, Inc., Michael Shah, and Zilmil, Inc. [ECF No. 32] shall be referred to herein as the "Consent Injunction," and the Court's August 10, 2017 Order for Preliminary Injunction against Defendants CIT Investments LLC, Brevspand EOOD, and CIT Investments Ltd. [ECF No. 35] shall be referred to herein as the "Preliminary Injunction," and, together with the Consent Injunction, as the "Preliminary Injunctions."

\$1,729,530.21 held in certain of Defendant Shah's foreign accounts and domestic investment accounts. And, the Receiver worked with a number of financial institutions to transfer to the Estate the funds in the other accounts Defendant Shah had claimed were exempt from the receivership, which transfers are forthcoming. To date, the Receiver has recovered a total of \$7,766,632.53 of the \$9.2 million the Receiver had identified and frozen and/or had been monitoring during prior reporting periods.

The foregoing transfers to the Estate were made pursuant to the Court's *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Michael Shah and Zilmil, Inc.* [ECF No. 223] (the "Permanent Injunction"), which, in addition to extending the powers and authority granted to the Receiver in the Preliminary Injunctions (including the authority to marshal the assets of the Zilmil Defendants), granted the Receiver the authority to collect the restitution obligations of the Zilmil Defendants and to pursue recover claims against third parties and insiders who received funds from those Defendants. Prior to the entry of the Permanent Injunction, in accordance with the budget, instructions, and rulings of the Court, the Receiver made every effort to provide only the services necessary to preserve the *status quo* and safeguard the assets of the Estate while incurring minimal fees and costs. After the entry of the Permanent Injunction in April 2019, however, the Receiver and his professionals increased their activity in order to comply with his duties under that Permanent Injunction. Accordingly, the Receiver requested, and this Court approved, an increase in the budget for the Receiver's quarterly fees and costs. *See* Motion seeking to increase quarterly budget at ECF No. 244 and Order approving same at ECF No. 253.

Thus, in accordance with the authority granted in the Permanent Injunction and other Orders of the Court, during the Reporting Period, the Receiver worked with his forensic

accountants to trace Zilmil, Inc.'s funds to assets and accounts Defendant Shah had claimed were exempt from the Receivership, including jointly-held, retirement and education savings accounts and real property. In particular, the Receiver's forensic accountant performed a tracing of: (i) \$616,618.83 held in Defendant Shah and his father Manoj Shah's joint bank accounts (collectively, the "Joint Accounts"); (ii) \$573,201.84 held in Infinity Web's bank accounts (the "Infinity Web Accounts"); (iii) the investments held in Defendant Shah's Roth IRA account worth approximately \$11,000, annuities held in accounts at CUNA Mutual worth approximately \$55,000, and investments in the Zilmil, Inc. 401(k) Plan worth approximately \$140,000 (collectively, the "Retirement Accounts")²; (iv) the investments held in Defendant Shah's 529 education savings plan with an approximate value of \$250,000 (the "529 Plan"); (v) Defendant Shah's life insurance policy³ with a cash surrender value of approximately \$18,000 (the "Policy"); and (vi) a residence⁴ jointly-owned by Defendant Shah and his brother Eric Shah located at 7820 Collins Grove Road, Jacksonville, Florida 32256, with an approximate value of \$1,250,000 (the "Residence"). And,

² The values of investments in these Retirement Accounts are subject to market fluctuations.

³ The Receiver has shown Defendant Shah proof that Zilmil paid the premiums for the Life Insurance policy for purposes of determining the amount Defendant Shah would need to pay to the Estate to keep the policy and avoid its cancellation and transfer of the cash surrender value to the Estate.

⁴ The Receiver discovered that Defendant Shah had purchased the Residence for nearly \$1.2 million as tenants in common with his brother, Eric, who is one of the defendants to a fraudulent transfer action the Receiver brought to recover the funds he and other Shah family members received from the Zilmil Defendants. The Receiver's forensic tracing shows that nearly all of the funds used to purchase the Residence came directly from Zilmil or indirectly from Zilmil through Defendant Shah. The Receiver does not believe that any of the funds used to purchase the Residence came from Eric Shah. The Receiver analyzed the results of his forensic accountant's funds tracing and bank reconstructions to trace the transfer of Zilmil business proceeds into the assets Defendant Shas was claiming were exempt from the Receivership. The Receiver showed those tracing analyses to Defendant Shah in support of the Receiver's demands that Defendant Shah turn over those assets to the Estate.

the Receiver prepared a Motion to impose a constructive trust over the foregoing assets and accounts based on the forensic accountant's tracing analysis.

Before the December 13, 2019 hearing on various pending Motions, including the Receiver's Motion to approve the claims process and to increase the quarterly budget for the Receiver and his professionals, the Receiver presented to Defendant Shah's counsel the draft Motion to impose constructive trust together with the forensic accountant's supporting declaration setting forth the tracing analyses showing that the source of the funds used to fund and/or purchase the purportedly exempt assets can be traced to Zilmil's business proceeds. After the December 13, 2019 hearing, the Receiver and Defendant Shah reached an agreement regarding the transfer to the Estate of most of the purportedly exempt assets.⁵ Accordingly, the Receiver liquidated the illiquid assets in various domestic accounts, including accounts Defendant Shah had previously claimed were exempt from the Receivership and transferred, or is in the process of transferring, the proceeds to the Estate.⁶ Further, Defendant Shah effected the transfer of most if not all of the funds in his accounts in India and worked with the Receiver to transfer the funds and assets in his accounts in Canada to the Estate.⁷

⁵ The Receiver also began preparing a Motion for order to show cause why Defendant Shah should not be held in contempt of court for failure to repatriate the assets in his foreign accounts, as required by the Court's Orders, but Defendant Shah agreed to transfer those assets to the Estate before the Receiver completed the Motion and thus it was not necessary to present a draft Motion to Defendant Shah's counsel or to file it with the Court.

⁶ When the stock market was at an all-time high, the Receiver liquidated previously frozen investment accounts held at TD Ameritrade resulting in proceeds of \$518,707.34 being deposited into the Estate's fiduciary account for the Zilmil Defendants.

⁷ The Receiver received a total of \$1,210,872.87 from Defendant Shah's Indian accounts, including \$202,000 from HDFC Bank, \$424,872.87 from IDBI Bank, and \$584,000 from Axis Bank. The Receiver is awaiting confirmation from Defendant Shah's counsel that Defendant Shah has transferred to the Estate all of the funds and assets in the accounts at those Indian banks, as Defendant Shah's counsel had informed the Receiver's counsel that Defendant Shah did not want

The only known assets of Defendant Shah that have not been transferred to the Estate are CUNA Mutual account (worth approximately \$55,000), the 529 Plan (worth approximately \$250,000), the Policy (with a cash surrender value of approximately \$18,000), and the Residence (worth approximately \$1,250,000),⁸ all of which Defendant Shah continues to claim are exempt from the Receivership. The Receiver is negotiating with Defendant Shah's counsel the possible turnover of the life insurance policy to Defendant Shah in exchange for a payment to the Estate, and the Receiver will continue to pursue the turnover of the other assets Defendant Shah is claiming are exempt because they can be traced to Zilmil, Inc. and will file the Motion to impose a constructive trust over those assets if the Receiver and Defendant Shah cannot reach an agreement regarding their disposition.

ii. Citrades Defendants' Accounts

During prior reporting periods, the Receiver investigated and obtained records for the accounts of the Citrades Defendants and the accounts to which the funds of the Citrades Defendants were transferred. The Receiver's forensic accountant analyzed the account records and created an account reconstruction that will be used for purposes of possible future litigation against third parties that facilitated the fraud and/or received significant fraudulent transfers from the Citrades Defendants.

to transfer all of the funds in the Indian accounts for fear of overpaying his restitution obligation. With respect to Defendant Shah's accounts in Canada, the Receiver and Defendant Shah sent a joint letter to TD Canada Trust requesting the liquidation and transfer to the Estate of all assets held in accounts at that institution and the Receiver is awaiting the receipt of those assets.

⁸ The Receiver's counsel has asked Defendant Shah's counsel to confirm whether all of the funds in all three accounts in India have been transferred to the Estate. *See* note 3, *supra*.

During a prior reporting period, the Receiver recovered a minimal amount of funds in the last of Defendant Scharf's frozen accounts that still contained funds. The Receiver is not aware of any other accounts of Defendant Scharf that may assets of the Receivership Estate.

iii. Total Amounts Frozen and/or Recovered from All Defendants

The following table summarizes the approximate amounts of funds the Receiver has identified, frozen, and/or transferred to his fiduciary accounts (not including the 529 Plan, the Policy or the Residence) since the Court entered the Statutory Restraining Order:

DEFENDANTS	AMOUNTS IDENTIFIED AND/OR FROZEN	AMOUNTS TRANSFERRED TO THE ESTATE
Michael Shah and Zilmil, Inc.	\$9,248,765.31 ⁹	\$7,766,632.53
Jason Scharf	\$123,648.02	\$123,648.02
<i>TOTAL</i>	<i>\$9,372,413.33</i>	<i>\$7,890,280.55</i>

B. Recovery Claims Against Relatives, Insiders, Affiliates and Third Parties

i. Zilmil Defendants

In addition to continuing to marshal assets from the Zilmil Defendants, the Receiver and his counsel, pursuant to the Permanent Injunction against those Defendants, also engaged in the investigation, negotiation and litigation in connection with the recovery of fraudulent transfers of Zilmil, Inc. business proceeds to Defendant Shah's family members, insiders, affiliates and third parties for which reasonably equivalent value was not provided to Zilmil, Inc.. All of the

⁹ This total includes investments that remain subject to market fluctuations.

Receiver's efforts aim at obtaining sufficient recoveries to satisfy Zilmil, Inc.'s restitution obligation and making significant distributions to the Zilmil Defendants' customers.

In particular, during the Reporting Period, the Receiver pursued fraudulent transfer actions against certain relatives and insiders or affiliates of the Zilmil Defendants who received significant transfers without providing any or reasonably equivalent value to Zilmil, Inc., including one action against Defendant Shah's family members seeking recovery of the approximately \$8 million they had received from Zilmil, Inc. One Shah family member filed a motion to dismiss based on, among other things, the statute of limitations and the Receiver prepared and filed a response asserting that the Receiver did not have the authority to bring the fraudulent transfer actions until the entry of the Permanent Injunction and the Receiver filed his fraudulent transfer claims within one year of such entry. Moreover, the Receiver prepared and served written discovery requests and prepared for the upcoming mediation in that action.

Further, the Receiver filed an action against Mr. Manoj Kumar and an affiliated company, which did business with Zilmil, Inc. and collectively received more than \$400,000 from Zilmil, Inc. The Receiver experienced difficulties serving Mr. Kumar, who resides in the UK, but eventually was able to serve him pursuant to the procedures set forth in the Hague Service Convention. The Receiver only recently received the complete proof of service and filed it with the Court on February 17, 2020.

Additionally, during the next Reporting Period, the Receiver intends to pursue fraudulent transfer claims against third-party service providers who received significant transfers from one or both of the Zilmil Defendants and facilitated Zilmil's affiliate marketing for binary options trading. The Receiver has performed an analysis of those fraudulent transfers, of the service providers' respective roles in the Zilmil Defendants' business operations, and of the likelihood of collecting

if a lawsuit is required to recover the fraudulent transfers. The Receiver is in the process of preparing demand letters and summary analyses of the fraudulent transfers and will send them to the service providers in an attempt to obtain recoveries prior to commencing litigation.

ii. Citrades Defendants

With respect to the Receiver's recovery claims against the persons and entities that received significant transfers from the Citrades Defendants without providing reasonably equivalent value to those Defendants, given the lack of funds in the Citrades Estate to cover the fees and costs of pursuing such claims, the Receiver recently proposed to the Court to investigate and pursue them on a contingency fee basis for the benefit of the defrauded customers.¹⁰ *See* ECF No. 255. The Court directed Defendants Scharf and A&J Media Partners to notify the Court of their position on the Receiver's proposal by February 21, 2020. *See* ECF No. 259.

C. Noticing and Claims Process and Distribution Plan and Communications with Customers

Pursuant to the Court's Order granting the Receiver's Motion to approve the noticing and claims process and distribution plan, the Receiver worked on refining the list of potential claimants to which the Receiver will provide notice of the claims process, formulating the online portal and claim form to which potential claimants will be sent to submit claims and supporting documentation, and identifying information that will assist potential claimants to determine if they are eligible to participate in the claims process, as necessary to fulfill the Receiver's fiduciary

¹⁰ Since his appointment, the Receiver has recovered approximately \$124,000 of the Citrades Defendants' funds. All of those funds were used to pay the Court-approved administrative fees and costs of the receivership Estate, including for the Receiver's investigation of those Defendants, the Receiver's forensic accountants' analysis of those Defendants many accounts, and otherwise fulfilling the Receiver's fiduciary duties pursuant to the Court's Orders.

duties and comply with the directives of the Court's Orders. *See* Motion to approve claims process at ECF No. 229 and Order approving same at ECF No. 253.

In particular, the Receiver is now working with counsel for the CFTC and the Court-approved noticing and claims agent (Stretto) to refine the list of potential customers and creditors to which notice of the claims process, claim form and distribution plan will be sent in an effort to minimize claims administration costs. The notice and claim form will invite all potential customers and creditors to submit a claim and supporting documentation on or before a particular date (the claims bar date). When claimants visit the online portal and fill out the claim form, they will be asked to provide information that will determine their eligibility before they can submit claims and upload supporting documents, thereby limiting the number of claims and documentation the Receiver and the claims agent need to process. Once the Receiver and the claims agent have processed the claims of the eligible claimants and made determinations regarding which claims to allow, the Receiver will report such determinations to the Court and request authority to make an initial distribution of approximately seventy-five percent (75%) of the total cash on hand in the Estate to holders of allowed claims. And, when the asset recovery phase of the Receivership is completed and all administrative expenses of the Estate are paid, the Receiver will file a motion seeking Court approval of a final distribution of the remaining cash on hand to the allowed claimants.

Also, during the Reporting Period, the Receiver continued to update the receivership website (www.BinaryOptionsReceivership.com) created for purposes of keeping all interested parties, including without limitation the Defendants' customers and creditors, apprised of the status of the Receivership and the CFTC's enforcement action, posting Court filings, notices, orders and important dates and deadlines, and answering frequently asked questions.

Finally, during the Reporting Period, the Receiver was contacted by customers of certain of the Defendants inquiring about the status of the Receivership and, in particular, the claims process. The Receiver informed them of the status and directed them to the above-referenced website for further information. The Receiver also updated his customer lists to include those customers and their current contact information.

D. Receiver's Status Report and Fee Application

During this Reporting Period, the Receiver prepared and filed a Status Report and a Fee Application for the seventh reporting/application period, covering the four-month period from April 1, 2019 through July 31, 2019. *See* ECF No. 232 (Report) and No. 243 (Application). The Court approved the fees and costs for which approval and payment were sought. *See* ECF No. 253. Accordingly, the Receiver disbursed the Court-approved fees and costs in accordance with that Order and such disbursements are reflected in the Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **Exhibit A**.

III. CASH ON HAND AND INTEREST EARNED

After payment of the Court-approved administrative expenses of the Estate for the first through the seventh reporting periods, the total amount of funds in the Receiver's fiduciary account for the Zilmil Defendants, including interest earned, is \$7,297,636.79 as of the end of the Reporting Period (January 31, 2019). During the Reporting Period, the Estate earned \$36,967.59 in interest in that fiduciary account, which is now maintained at Metropolitan Commercial Bank.

IV. CONCLUSION

The Receiver appreciates the opportunity to assist the Court in this matter. The Receiver and his professionals will continue their efforts, as discussed herein, to fulfill the Receiver's duties under the Court's Orders and will do so in the most cost-effective manner possible.

Respectfully submitted this 17th day of February, 2020.

/s/ Kenneth Dante Murena
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 17th day of February, 2020, I electronically filed the foregoing Report with the Court using the CM/ECF system, which provides notice of the filing upon all counsel of record and parties who have appeared in this case and are registered to receive electronic notice of all court filings.

/s/ Kenneth Dante Murena
Kenneth Dante Murena,
Court-Appointed Receiver