

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 FIFTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the "Receiver") in the above-captioned enforcement action, submits his fifth status report setting forth his activities and efforts to fulfill his duties under the orders pursuant to which he was appointed for the time period of July 1, 2018 through September 30, 2018 (the "Reporting Period").

I. INTRODUCTION

Prior to this Reporting Period, the Receiver had frozen funds in excess of \$9.3 million, of which more than \$6 million was transferred to the Receiver's fiduciary accounts, and approximately \$3.3 million remains frozen at various financial institutions pending further investigation by the Receiver and developments in the enforcement action. Further, the Receiver had obtained and reviewed tens of the thousands of records from the various financial institutions at which Defendants held accounts and from third parties with which Defendants conducted business, produced those records to the parties to the extent requested, directed his forensic

accountant to analyze those records and prepare consolidated account reconstructions for certain of the Defendants (which were nearly completed by the end of the third reporting period), worked with the parties to exchange information and records in the context of discovery for the enforcement action, prepared and filed detailed status reports and fee applications, and on March 16, 2018, appeared at a hearing before this Court on various pending motions.

Since filing the Receiver's Fourth Status Report [ECF No. 149], in accordance with the discussions with the Court and the parties during the March 2018 hearing, the Receiver has 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. Specifically, during this Reporting Period, the Receiver recovered an additional \$24,796.31 pursuant to a settlement with Skrill Limited ("Skrill"), monitored the status and activity of the investment and bank accounts of certain of the Zilmil Defendants at various financial institutions for which the account balances were not transferred to the Estate (pursuant to an agreement with the Zilmil Defendants or for other reasons), continued to explore the turnover of the accounts of the Zilmil Defendants at three banks in India where more than \$1.4 million (USD) is being held, monitored the activity of the servers of the Zilmil Defendants at Rackspace, and performed various other administrative tasks necessary to fulfill the Receiver's fiduciary duties and comply with the directives of the appointment order. Further, during the Reporting Period, the Estate earned \$10,805.33 in interest in its fiduciary accounts, and the Receiver negotiated an interest rate increase from 0.78 % to 1.28% on the fiduciary account at United Bank in which the Receiver is holding more than \$5.5 million of funds obtained from the Zilmil Defendants. This interest rate increase, which took effect on October 1, 2018, will generate at least an additional \$28,000 in interest during the next twelve months (assuming no additional funds are deposited into or withdrawn from the account). Finally, the

Receiver prepared and filed a quarterly Status Report and Fee Application for the fourth Reporting Period (covering the second quarter of 2018), and a Report on the budget for projected expenses for the Fifth and Sixth Fee Application Periods (July 1, 2018 – December 31, 2018).

After payment of the Court-approved administrative expenses of the Estate for the first through fourth reporting periods, the total amount in the Receiver's fiduciary accounts for all Defendants, including interest earned, is \$5,589,313.38 as of the end of the Reporting Period.

II. THE APPOINTMENT AND DUTIES OF RECEIVER

A detailed recitation of the appointment and duties of the Receiver is set forth in the Receiver's Initial Report. ECF No. 55.¹

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

During this Reporting Period, the Receiver and his professionals continued their efforts to marshal and preserve the assets and records of the Defendants, seeking to recover additional assets and records of the Defendants and coordinating with counsel for the CFTC and counsel for the Defendants on various matters in connection with fulfilling the respective duties of the Receiver and Defendants under the Court's Orders.

¹ Consistent with the Initial Report, 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., 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."

A. Marshalling and Preserving Assets and Records

i. Zilmil Defendants' Accounts

During a prior Reporting Period, Defendant Shah's counsel had informed the Receiver that the Zilmil Defendants held at least \$1,000,000 in CD-like products in three banks located in India.² See ECF No. 55 at p. 12. The Receiver had requested that Dr. Shah assist with having the CD-like products re-titled in the Receiver's name and that the Receiver be named as their sole owner and signatory. Dr. Shah agreed to do so, and he took further steps to help the Receiver complete this task. To date, however, ownership and/or control of the accounts has not been transferred to the Receiver. In addition, the Receiver had requested that Dr. Shah produce records for the accounts at the Indian banks. During the Reporting Period, Dr. Shah provided the Receiver with the bank statements for the accounts for the first full year of the Receivership, from July 2017 through June 2018, which the Receiver reviewed. The bank statements revealed that, as of June 30, 2018, the accounts contained funds in savings accounts and CD-like products totaling approximately \$1,402,846.66 (USD).

As of the end of this Reporting Period, including the funds in India, the Receiver has frozen and/or recovered in excess of \$9.2 million in accounts of the Zilmil Defendants, of which more than \$5.9 million was transferred to the Receiver's fiduciary accounts and more than \$3.3 million remains frozen in accounts at various institutions pending further investigation by the

² As is detailed in the Receiver's Initial Report, although the Consent Injunction requires the Defendants to repatriate all of their assets located outside of the United States, Defendant Shah's counsel advised the Receiver that there may be significant penalties if the CD-like products are liquidated before their maturity dates. See ECF No. 55 at pp. 12-13. Therefore, the Receiver has agreed for now to not seek to liquidate those products and transfer the proceeds to his fiduciary account.

Receiver and developments in the enforcement action.³ The Receiver is seeking to have some of those frozen funds transferred to the Estate and will allow other funds to remain in the frozen accounts because they are investments, potentially exempt assets, and/or jointly owned with non-defendants and the sources of the funds have not yet been confirmed, or until the circumstances of the case change.

ii. Citrades Defendants' Accounts

During a prior reporting period, the Receiver identified funds of Defendant Brevspand EOOD in the amount of \$24,796.31 held by Skrill, an affiliate of Paysafe Group Limited ("Paysafe").⁴ The Receiver worked with counsel for Skrill and Paysafe to reach an agreement to have those funds transferred to the Receiver's fiduciary account. On August 30, 2018, this Court approved a settlement agreement concerning those funds. *See* Receiver's Motion to Approve [ECF No. 156] and Order [ECF No. 158]. And, on September 18, 2018, the estate received the funds totaling \$24,796.31.

Also, during the Reporting Period, the Receiver continued to investigate other possible accounts to which the funds of the Citrades Defendants were transferred, including the funds that were transferred in and out of the four bank accounts held in the name of Defendants CIT Investments, Ltd. or Brevspand EOOD in the Bulgarian bank Investbank.

³ Although the Receiver does not have written confirmation from the three banks in India that the accounts of the Defendants are, in fact, frozen and that they will not allow any party, including the Defendants, to access or transfers any funds from those accounts, counsel for the Zilmil Defendants have assured the Receiver that the Zilmil Defendants will not access the accounts or transfer the funds therein.

⁴ Several Paysafe affiliates reported to the Receiver that they were holding funds on behalf of other entities that may be related to the Citrades Defendants, but which entities were not named in the Preliminary Injunctions. The Receiver will continue to investigate the relationship between these third-parties and the Citrades Defendants.

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

The following table summarizes the amounts of funds the Receiver has identified, frozen, and/or transferred to his fiduciary accounts since the Court entered the Statutory Restraining Order, and the amounts transferred to the Estate during the Reporting Period:

DEFENDANTS	AMOUNTS IDENTIFIED AND FROZEN AND/OR TRANSFERRED TO ESTATE TO DATE	AMOUNTS TRANSFERRED TO THE ESTATE	AMOUNTS TRANSFERRED TO ESTATE DURING REPORTING PERIOD
Michael Shah and Zilmil, Inc.	\$9,248,765.31	\$5,913,454.30	\$0.00
Jason Scharf	\$123,288.36	\$123,288.36	\$24,796.31
<i>TOTAL</i>	<i>\$9,372,053.67</i>	<i>\$6,036,742.66</i>	<i>\$24,796.31</i>

B. Defendants' Customers

As detailed in the Receiver's prior reports, the Receiver had begun, but has not completed, an investigation into the identity of the Defendants' customers and the amounts they transferred to the Defendants. If and when the Receiver is directed by the Court to resume his investigation of the Defendants' customers, the Receiver will complete the investigation and seek to provide each customer with notice of and information regarding the Receivership and the CFTC enforcement action and how they may stay informed of the status of the case, how their rights may be affected, and how they may participate in this Receivership and, to the extent appropriate and subject to Court-approval, submit claims and receive distributions based on any losses they may have sustained as a result of the Defendants' actions.

Also, in that regard, during the Reporting Period, the Receiver continued to update the 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 a few customers of certain of the Defendants. The Receiver informed them of the status of the Receivership 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.

C. Ongoing Legal Proceedings Involving the Defendants

As of the end of the Reporting Period, the Receiver was unaware of any proceedings (other than this action) to which any of the Defendants are a party or by which their rights, interests or assets may be affected. In the event the Receiver learns of any such proceeding, he will discuss it with counsel for the CFTC and counsel for the Defendants and take any and all actions that are appropriate and necessary to preserve the interests of the Receivership Estate.

D. Potential Claims Against Third Parties

During a prior Reporting Period, at the March 16, 2018 hearing, the Court granted the CFTC's motion to approve the consent judgment containing a permanent injunction and other relief as to Defendants Jason Scharf and A&J Media Partners, Inc. [ECF. No. 91]. The CFTC was instructed to submit a proposed final judgment, and it did so. In anticipation of the Court's entry of that judgment, the Receiver and his professionals worked to identify potential sources from which the Receivership Estate could recover funds or other assets belonging to those Citrades Defendants, including affiliates, relatives and third parties who received funds or other assets

traceable to those Defendants' businesses or customers. Upon entry of the judgment, the Receiver will pursue claims against certain recipients of recoverable transfers provided that the Court grants the motion to approve contingency fee arrangement for future asset recovery efforts related to the Citrades Defendants, which the Receiver intends to file in light of the minimal amount of funds in the Estate attributable to those Defendants.

In preparation for pursuing those claims, the Receiver has been in contact with counsel representing certain customers of the Citrades Defendants and a financial investigator who works for a company that represents certain Citrades customers seeking to aid in such claw-back actions.

E. Receiver's Reports and Fee Application

At the March 16, 2018 hearing, the Court instructed the Receiver to take no further action in connection with searching for, or attempting to communicate with, customers of the Defendants. Further, the Court denied (without prejudice) the Receiver's motion to employ vendors to provide noticing and claims processing services. And, the Court set a budget of \$50,000 for fees and costs of the Receiver and his professionals for the fourth reporting period (the second quarter of 2018).

The Receiver has complied with the Court's directives during the fourth reporting period, as reflected in the Receiver's Fourth Status Report [ECF No. 149] (covering the second quarter of 2018), filed on August 10, 2018, and during the fifth Reporting Period, as demonstrated in this Report (covering the third quarter of 2018). On August 30, 2018, the Receiver filed his Unopposed Fourth Interim Application for an Order Approving and Authorizing Payment of Fees and Expenses of Receiver and His Professionals [ECF No. 157], seeking fees and costs within the \$50,000 budget set by the Court for the fourth Reporting Period. The Court granted that Application on September 6, 2018 [ECF. No. 164] and directed the Receiver to file a report advising the Court of the Receiver's projected expenses for the Fifth Application Period (July 1,

2018 – September 30, 2018) and the Sixth Application Period (October 1, 2018 – December 31, 2018) so the Court could determine how to proceed. In accordance with that Order, during this Reporting Period, the Receiver disbursed the Court-approved fees and costs from his fiduciary accounts and prepared and filed a Report on Budget for Projected Expenses for the Fifth and Sixth Fee Application Periods (July 1, 2018 – December 31, 2018) [ECF No. 169]. As will be reflected in the forthcoming Fee Application for this (fifth) Reporting Period, the fees and costs incurred by the Receiver and his professionals are within the budget proposed in that report.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES

At the conclusion of the Reporting Period, the Receiver held a total of \$5,589,313.38 in cash on hand, in interest-bearing fiduciary accounts at City National Bank of Florida and UnitedBank, segregated based on the owner(s) of the accounts from which the funds were transferred as follows:

DEFENDANTS	AMOUNT IN FIDUCIARY ACCOUNTS
Michael Shah or Zilmil, Inc.	\$5,576,503.94
Jason Scharf	\$12,809.44
<i>Total</i>	\$5,589,313.38

See Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **Exhibit A**.

During the Reporting Period, the Receiver made the Court-approved disbursements from his fiduciary accounts for the Estate's administrative expenses incurred during the fourth reporting/application period (April 1, 2018 - June 30, 2018) pursuant to the Court's Order granting

the Receiver's Fourth Fee Application. *See* ECF Nos. 157 (Fourth Fee Application) and 164 (Order granting Fourth Fee Application). *See* Exhibit A.

V. 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 2nd day of November, 2018.

/s/ Russell Landy
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*Counsel for Kenneth Dante Murena,
Court-Appointed Receiver*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2nd day of November, 2018, 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/ Russell Landy
Russell Landy
*Counsel for Kenneth Dante Murena,
Court-Appointed Receiver*