

**UNITED STATES DISTRICT COURT  
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.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
ALLOWED CLAIMS AND DISTRIBUTION TO CLAIMANTS**

Kenneth Dante Murena, the court-appointed Permanent Receiver (the "Receiver") in the above-captioned enforcement action files this unopposed motion (the "Motion"), pursuant to this Court's Order approving the Noticing and Claims Administration Process and Plan of Distribution [ECF No. 253] (the "Order Approving Claims Process") entered upon the Receiver's Motion to Approve (A) Noticing and Claims Administration Process and (B) Plan of Distribution [ECF No. 229] (the "Motion to Approve Claims Process"), for approval of the Receiver's proposed distribution of assets of the Estate (the "Distribution"), and in support states:

## I. INTRODUCTION

Since his appointment, the Receiver has worked diligently with the Commodity Futures Trading Commission (the “CFTC”) and Defendants Michael Shah (“Shah”) and Zilmil, Inc. (“Zilmil” and together with Shah, the “Zilmil Defendants”) to identify and marshal all known assets and records of the Zilmil Defendants. At present, the Estate holds \$10,023,150.00 in cash marshaled from the Zilmil Defendants.

In light of the amount of funds presently in the Estate, the difficult financial condition of many of the defrauded customers, the entry of the Permanent Injunction (defined *infra*), and the conclusion of the Claims Administration Process (as defined in the Motion to Approve Claims Process), it is appropriate for the Receiver to make the Distribution to claimants with Allowed Claims at this time. The total amount of Allowed Claims is \$4,589,356.59 as shown on the claims log attached hereto as **Exhibit A.**<sup>1</sup>

In the Motion to Approve Claims Process, the Receiver proposed to file a motion to approve an Initial Distribution to claimants with Allowed Claims of seventy-five percent (75%) of the total amount of cash on hand. ECF No. 229. But, because the Estate is able to make one distribution to claimants satisfying all of the

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<sup>1</sup> To protect the claimants from potential telemarketing frauds that have preyed upon victims of binary options trading schemes, the Receiver submits as Exhibit A a list of the amounts to be distributed to each of the claimants with Allowed Claims identified only by a claim number in the proposed Distribution. The Receiver retains all personal information necessary to identify claimants, process their claims and make the proposed Distribution in his office. Should the Court wish to review such files, the Receiver would propose an *in camera* review of that personal information.

Allowed Claims in full, the Receiver now seeks authority to make the Distribution in the amount of \$4,589,356.59, with each claimant to receive 100% of the amount of their Allowed Claim.

## **II. BACKGROUND AND CLAIMS PROCESS**

On May 22, 2019, the Court entered the *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Michael Shah and Zilmil, Inc.* (the “Permanent Injunction”). ECF No. 223.

On August 1, 2019, pursuant to the Permanent Injunction against the Zilmil Defendants, the Receiver filed the Motion to Approve Claims Process. ECF No. 229. On December 20, 2019, the Court entered its Order Approving Claims Process [ECF No. 253], which was later revised by this Court’s Orders on July 27, 2020 [ECF No. 299] and November 16, 2020. ECF No. 318.

The Receiver conducted the Claims Administration Process in accordance with the Motion to Approve Claims Process and the Order Approving Claims Process. *See id.* The Receiver, through his noticing and claims agent Stretto, collected claims on the online claims portal created and managed by Stretto. Stretto then began tabulating and confirming completion of claims and fielding questions and concerns of eligible claimants, in accordance with instructions and parameters set by the Receiver. Stretto has only escalated claimants’ inquiries, unsupported but significant claims, and late-filed claims to the Receiver and his counsel as necessary and appropriate to minimize the cost to the Estate.

The deadline for eligible claimants to submit claims was originally September 25, 2020, but the Receiver, noting that many claimants had not received notice of the claims process, requested and received Court authority to send out a second round of notices and extended the claims filing deadline to November 25, 2020. Shortly after the November 25<sup>th</sup> deadline, Stretto began an initial review of the 624 claims received through the online claims portal. Most of the claims submitted lacked supporting documentation and were summarily disallowed. Stretto also reviewed the 735 opt-out responses and/or inquiries about the claims process submitted through the online claims portal. With Stretto's assistance, the Receiver then completed a review and made an initial determination regarding approximately 200 claims that contained at least some supporting documentation and a completed or nearly completed claim form, and disqualified claims (a) without any supporting documentation, (b) without affirmations of all declarations, and (c) that failed to demonstrate a net loss.

The Receiver's counsel then drafted an initial claims determination letter and sent it out by email to each claimant that submitted an online claim prior to the January 25, 2021 deadline for the Receiver to send initial determinations to claimants. ECF No. 318. That initial determination email prompted many claimants to ask for assistance in completing or amending their claim form and in submitting supporting documentation. The email also convinced some potential claimants that this claims process is a legitimate Court-approved process rather than just another binary options fraud. Accordingly, the Receiver collected and reviewed 43 requests for reconsideration and/or amended claims, and 22 late-filed claims from claimants that

the Receiver determined had not received notice during the noticing phase of the claims process. After a complete review of those claims and requests for reconsideration, the Receiver made his final determinations regarding all allowed claim amounts. Prior to the March 20, 2021 deadline, the Receiver sent his final determination of allowed claim amount to each claimant that had filed a request for reconsideration, an amended claim, or a late claim at that point in the claims process.

After the mailing of the final determinations, some claimants asked for clarification or additional assistance in correcting their claims, and 22 late-filed claims were submitted by claimants that the Receiver determined had not received notice during the noticing phase of the claims process. Most of those late claimants came to the Receiver through a referral from the Department of Justice (“DOJ”). Those claimants had reached out to the DOJ upon hearing of the criminal prosecution of a binary options affiliate marketer. In an effort to be as inclusive as possible and to prevent delay of the claims process and the waste of Court resources by requiring late claimants to appeal to this Court for permission to file late claims, the Receiver processed and reviewed all claims and requests for reconsideration, allowing all properly supported claims that were filed or amended by April 19, 2021 – the claimants’ appeal deadline. ECF No. 318.

The Receiver’s counsel and Stretto have expended significant efforts reviewing all claims and documentation and communicating with claimants to assist them in correcting their submissions in an effort to give all potential claimants an opportunity to participate in the claims process and to recover from the Estate. Indeed, because

the Receiver did not have from the Zilmil Defendants information or documents that would corroborate the claims of the potential claimants, the Receiver had to strictly require documentation showing the transfer(s) between individual customers and any Binary Options Platform to which the Zilmil Defendants directed customers.<sup>2</sup> Such strict proof requirements led to significant interaction between the Receiver's office and claimants. During this process, the Receiver discovered many legitimate claimants that lost their life savings through fraudulent binary options trading platforms, websites, and companies and who will greatly benefit from the Distribution that will be made from this Estate upon Court approval.

After reviewing all submitted claims, supporting documentation and requests for reconsideration and responding to all claimant inquiries, the Receiver determined that 141 claims with a total dollar amount of \$4,589,356.59 would be allowed or partially allowed. *See* Exhibit A. And, the Receiver disallowed 505 claims because they were either wholly unsupported by any documentation, fraudulent claims for excessive amounts, claims submitted with falsified documentation, and/or incomplete, lacking affirmations and signatures. The Receiver and his professionals assisted all claimants who expressed an interest in submitting and proving their claims to list their transfers to binary options traders, total their net losses from binary options trading, and gather documents supporting those transfers and losses, including bank

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<sup>2</sup> The Receiver is aware that some claimants may have also received emails marketing binary options from other affiliate marketers and/or binary options traders because their email addresses were sold among various marketers and traders.

statements, credit card statements, cash transfer receipts, and cryptocurrency purchase and transfer receipts. In cases where claimants could not locate any supporting financial documents, the Receiver and his counsel reviewed and accepted emails memorializing deposits to binary options trading accounts and police reports and sworn statements of losses attached to those reports. It was likely due to these efforts to help claimants complete their claims that no appeals of the Receiver's determinations were filed with this Court or submitted to the Receiver. The deadline to submit any such appeal was April 19, 2021. ECF No. 318. Moreover, at the time of filing this Motion, no claimant had indicated any intent to appeal the Receiver's final determination of any allowed claim amount.

Accordingly, the Receiver now seeks authority to make the Distribution to each claimant with an Allowed Claim as listed on Exhibit A.

### **III. THE PROPOSED DISTRIBUTION**

Before knowing the total amount of the claims which would be filed, the Receiver proposed, and the Court approved, an the Initial Distribution on a *pro rata* basis, to claimants with Allowed Claims, of seventy-five percent (75%) of the total amount of cash on hand upon the conclusion of the Claims Administration Process. *See* Motion and Order Approving Claims Administration Process [Motion, ECF No. 229 and Order, ECF No. 253]. But now, the Receiver is aware that the Estate can pay the Allowed Claims totaling \$4,589,356.59 in full, and it is no longer necessary to hold back twenty-five percent of the Allowed Claims.

The Receiver proposes to use Stretto to make the disbursement to claimants. The Receiver has put in place a cash management system, previously approved by the Court, using Stretto (at no cost to the Estate) for the purpose of tracking the Estate's deposits and disbursements of cash assets and expenses, making the transfers necessary to administer the Estate, and generating reports of those deposits and disbursements. Therefore, Stretto would be able to efficiently prepare checks and directly send them out to claimants from the Estate's cash management account using the physical addresses provided by claimants on their proof of claim forms. Stretto uses the Positive Pay system<sup>3</sup> and mail tracking to assure the checks reach the correct party and are not cashed by an unauthorized person. The cost per check sent is \$1.29 plus Stretto's time expended as Senior Associate rates (approximately \$185/hour) in providing review and quality control in the preparation, mailing and tracking of the checks and preparation of disbursement reports memorializing those payments to claimants. Moreover, Stretto will track the checks sent to claimants and investigate any missing, seemingly altered or uncashed checks. The Receiver has determined that this is the most cost-effective and efficient method of making the Distribution to claimants proposed herein.<sup>4</sup>

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<sup>3</sup> Positive pay is a fraud-prevention system offered by Stretto's commercial bank to protect the Estate against forged, altered, and counterfeit distribution checks. Stretto will provide the bank provide a list of the check number, dollar amount, and account number of each check sent to claimants.

<sup>4</sup> The Court had set an initial \$75,000 budget for phase one of the noticing and claims process. Stretto was able to carry out both phase one and phase two of the claims process (reviewing claims and communicating with claimants) spending only

After making the Distribution and confirming that the allowed claimants receive and cash the distribution checks and paying all Court-approved administrative costs of the Estate, the Receiver will formulate a proposal for disposing of the remaining funds in the Estate (discussed below), work with the Receiver's tax consultants to prepare and file the Estate's final tax returns, carry out various administrative tasks necessary to wind down the Estate, and seek a discharge of the Receiver.

#### **IV. THE FUNDS REMAINING AFTER DISTRIBUTION**

The Receiver estimates that, after the proposed Distribution to claimants with allowed claims and payment of the Court-approved fees and costs incurred by the Receiver and his professionals in connection with such Distribution and winding down the Estate, there will remain approximately \$5 million in the Estate. The Receiver has begun discussions with counsel for the CFTC and counsel for Shah regarding the appropriate disposition of such funds in light of the outstanding Court-ordered civil monetary penalties totaling \$5,000,000 (\$1,000,000 for Shah and \$4,000,000 for Zilmil) (*see* ECF No. 223 at Sec. V.C.), among other considerations, and will continue such discussions with the goal of reaching an agreement. Upon formulating a proposal for the disposition of the remaining funds in the Estate, the Receiver will file a Motion seeking this Court's approval of such proposal.

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\$30,467.48 for all noticing and claims related services performed thus far. The Receiver proposes allowing Stretto to bill against the remainder of the \$75,000 budget to pay for its distribution agent services.

## V. CONCLUSION

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court: (i) approve the Distribution to all eligible claimants holding Allowed Claims listed on Exhibit A, (ii) approve the employment of Stretto as distribution agent to prepare, send out, and track the checks to claimants; and (iii) grant such other relief as the Court deems just and proper.

## VI. CERTIFICATION

The Receiver hereby certifies that he has conferred with counsel for the CFTC and counsel for Shah regarding the relief requested herein. Counsel for the CFTC confirmed that they have no objection to the requested relief. Counsel for Shah confirmed that Shah does not oppose this Motion, however, he asserts that it is not feasible to definitively identify or associate any of the claimants to Zilmil for the reasons previously stated on the record. Shah nevertheless does not oppose the Receiver's proposal to distribute funds to the claimants pursuant to this Motion or to any customer who lost money as a result of binary options marketing or brokerage.

Dated: May 19, 2021

Respectfully submitted,

/s/ Kenneth Dante Murena  
Kenneth Dante Murena, Esq.  
*Court-Appointed Receiver*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Receiver's Motion to Approve Allowed Claims and Distribution to Claimants was served via CM/ECF this 19<sup>th</sup> day of May, 2021, upon all counsels of record.

/s/ Kenneth Dante Murena

Kenneth Dante Murena, Esq.  
*Court-Appointed Receiver*  
Florida Bar No. 147486