

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 SIXTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the "Receiver") in the above-captioned enforcement action, submits his Sixth 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 October 1, 2018 through March 31, 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 remained frozen at various financial institutions pending further investigation by the Receiver and developments in the enforcement action. Further, the Receiver reviewed records from many financial institutions at which Defendants held accounts and from third parties with which Defendants conducted business with Defendants, worked with the parties to exchange information and records in the context of discovery for the enforcement action,

analyzed his accountant's forensic reports, investigated several transfers of property and/or funds to third parties, and prepared and filed detailed status reports and fee applications.

Since the conclusion of the fifth reporting period, which ended on September 30, 2018, in accordance with the discussions with the Court and the parties during the hearings in March and November of 2018, 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 participated in the negotiations of the consent permanent injunction entered against the Citrades Defendants, participated in the settlement discussions concerning the Zilmil Defendants, 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, the Receiver explored alternative noticing and claims procedures that would significantly reduce the expense thereof to the Estate, which the Receiver will propose to the Court during the next reporting period. Finally, the Receiver prepared and filed a quarterly status report and fee application for the fifth reporting period (covering the third quarter of 2018) [*See* ECF No. 180 (Report) and # 210 (Application)] and on March 13, 2018, this Court granted that fee application [*See* Order at ECF No. 217].

After payment of the Court-approved administrative expenses of the Estate for the first through the fifth reporting periods, the total amount of funds in the Receiver's fiduciary accounts

for all Defendants, including interest earned, is \$5,595,726.35 as of the end of the Reporting Period (March 31, 2019). During the Reporting Period, the Estate earned interest in its fiduciary accounts totaling \$35,601.81, which substantially exceeds the total amount of fees and costs incurred by the Receiver and his professionals during the same 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 preserve the assets and records of the Defendants, investigated certain transfers made to third parties by Defendants, consulted with counsel for the CFTC regarding the consent permanent injunction against the Citrades Defendants, worked with counsel for the Zilmil Defendants and counsel for the CFTC on the terms of the settlement of the CFTC's claims against those Defendants, and coordinated with counsel for the CFTC and counsel for the Defendants on various

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."

other matters in connection with fulfilling the respective duties of the Receiver and Defendants under the Court's Orders.

A. Marshalling and Preserving Assets and Records

i. Zilmil Defendants' Accounts

During a prior reporting period, the Receiver determined that the Zilmil Defendants held bank accounts in India that contained funds in savings accounts and CD-like products totaling approximately \$1,402,846.66 (USD). Despite the Zilmil Defendants' agreement to transfer ownership and/or control of the accounts to the Receiver, the transfer has not been made because it would cause liquidation penalties and loss of interest. Nevertheless, the Receiver continues to monitor and preserve the status quo in those accounts.

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 Receiver and developments in the enforcement action.² The Receiver has allowed those 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.

After the Reporting Period, the Court entered a *Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants Michael Shah and Zilmil, Inc.* (the "Consent Order"). See ECF No. 223. As such, the Receiver will work with the Zilmil

² 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.

Defendants' counsel to have the assets in those accounts liquidated, as necessary and at the appropriate time to maximize the recover to the Estate, and transferred to the Receiver's fiduciary account for the Zilmil Defendants in partial or full satisfaction of their Restitution Obligation under the Consent Order.

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, 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. The Receiver's forensic accountant analyzed the account records and incorporated the transfers in and out of those accounts in the consolidated account reconstruction they prepared for the Citrades Defendants. The Receiver did not conduct any further investigation of those accounts during the Reporting Report but will continue his investigation and pursue recovery claims on behalf of the Citrades Defendants' customers now that the Court has entered an *Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief Against Defaulting Citrades Defendants* [ECF No. 222] and in anticipation of the Court's entry of a final judgment setting forth the restitution obligations of the non-defaulting Citrades Defendants pursuant to the settlement likely to be reached between those Defendants and the CFTC.

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:

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

B. Defendants' Customers and Possible Noticing and Claims Procedures

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. During a prior reporting period, the Receiver sought authority to engage a noticing and claims agent to assist the Receiver in providing the foregoing notice and administering a claims process that the Receiver would propose in the future. This Court determined that, given the associated costs and the fact that the CFTC's claims had not yet been adjudicated or settled, it was premature to engage a noticing claims agent at that time.

During the Reporting Period, the Receiver explored a less costly alternative to the noticing and claims procedures he had previously proposed to the Court. In particular, the Receiver consulted with a receiver appointed in another CFTC enforcement action and SEC enforcement action based on binary options trading and affiliate marketing regarding the possibility of formulating and implementing a joint noticing and claims process, given that there is overlap between and among the customers of the various defendants to the enforcement actions and it may not be possible to determine the particular defendant of which each potential customer is an actual customer before receiving information and documents from those potential customers. Further, given the federal government's interest in the distribution of the funds in the receivership estates to the customers that lost money as a result of the various defendants' misconduct, the SEC has expressed an interest in overseeing and paying for a significant portion of the joint noticing and claims process, including the amounts the noticing and claims agent would charge to provide notice to all potential claimants, to manage the information and documents the potential claimants submit in support of their claims, and to process the claims by eliminating ineligible claimants and reducing the eligible claimants based on certain parameters established by the respective receivers. Given that there are hundreds of thousands, if not millions, of potential customers of the defendants to each enforcement action, such a government-funded joint noticing and claims process would save the respective Estates hundreds of thousands of dollars.

Also, 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. Status of Entry of Consent Final Judgments Against Defendants

i. Zilmil Defendants.

The CFTC and the Zilmil Defendants agreed upon the terms of the Consent Order for Permanent Injunction and Other Statutory and Equitable Relief Against Defendants Michael Shah and Zilmil, Inc. (the “Consent Order”) and Defendant Shah executed that Consent Order on behalf of the Zilmil Defendants. On March 18, 2019, the CFTC filed a motion [ECF No. 218] with this Court to approve that Consent Order.

On April 24, 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 “Consent Order”). *See* ECF No. 223. The Consent Order provides for the Receiver to remain in his role as a permanent Receiver . . .

for the Zilmil Defendants and their affiliates and subsidiaries (hereinafter “Receivership Defendants”), and for all of the funds, properties, premises, accounts, income, money now or hereafter due or owing to the Receivership Defendants, and other assets directly or

indirectly owned, beneficially or otherwise, by the Receivership Defendants (hereinafter “Receivership Estate”).

See Consent Order, ECF No. 223 at Section V. Further, the Court directed and authorized the Receiver to collect the following restitution amounts from the Zilmil Defendants:

Defendant Shah shall pay restitution in the amount of nine million, three hundred thousand dollars (\$9,300,000), and Defendant Zilmil shall pay restitution in the amount of eight million, five hundred fifty-four thousand, two hundred eighty nine dollars and sixty-nine cents (\$8,554,289.69) (collectively, “Restitution Obligation”)

Id. Accordingly, the Receiver will work on repatriating the more than \$3.3 million that remain frozen in accounts at various institutions but not yet in the Receiver’s possession, liquidate the investments located in India at the appropriate time to maximize the recovery to the Estate, as discussed above, and deposit those funds into the Receiver’s fiduciary account for the Zilmil Defendants. All of those funds will then be used for the benefit of the Receivership Estate, to administer a claims process, and to ultimately make a distribution to the Defendants’ customers as set forth in the Consent Order. *See id.*

ii. Citrades Defenadants

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]. During the Reporting Period, the CFTC was instructed to submit a proposed final judgment, and it did so. The Receiver consulted with counsel for the CFTC regarding the calculation of the appropriate damages amount for the consent final judgment, based on the Receiver’s forensic analyses of the accounts of the Citrades Defendants.

After the Reporting Period, on April 25, 2019, the Court entered an *Order for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and*

Equitable Relief Against Defaulting Citrades Defendants. See ECF No. 222. The non-defaulting Citrades Defendants and the CFTC have not yet reached a settlement regarding damages but continue to engage in discussions and are likely to reach such a settlement, during the next reporting period, setting forth the restitution obligations of those Defendants, pursuant to the *Consent Order of Permanent Injunction and Other Statutory and Equitable Relief Against Jason B. Scharf (d/b/a Citrades.com and Autotradingbinary.com) and A&J Media Partners, Inc.* [ECF No. 207] entered on December 18, 2018. Also on April 25, 2019, the Court entered an Order directing the CFTC to file periodic notices informing the Court of the settlement status with the non-defaulting Citrades Defendants, directing the parties to file a joint notice of settlement with the Court within ten days of reaching a settlement, and noting that it would set an evidentiary hearing on damages if the parties reach an impasse. See ECF No. 224.

E. Recovery Claims Against Third Parties

Now that the Court has entered the Consent Final Judgment against the Zilmil Defendants and the Final Judgment against the defaulting Citrades Defendants, and in anticipation of the the entry of a consent final judgment against the non-defaulting Citrades Defendants, the Receiver and his professionals will continue their efforts to identify potential sources from which the Receivership Estate could recover funds or other assets belonging to those Defendants, including affiliates, relatives and third parties who received funds or other assets traceable to those Defendants' businesses or customers. The Receiver intends to pursue claims against those persons and entities that received significant recoverable transfers.

Before continuing his investigation of sources of recovery and pursuing claims against recipients of recoverable transfers from the Citrades Defendants, the Receiver will file a motion to approve a contingency fee arrangement for the Receiver and his counsel for purposes of pursuing

those claims for the benefit of the customers and creditors of the Citrades Defendants.³ Indeed, because only minimal funds remain in the Receiver's fiduciary account for the Citrades Defendants, there are insufficient funds in the Estate to cover the fees and costs the Receiver will incur in connection with pursuing recovery claims for the benefit of their customers and creditors.⁴ Because, however, the Receiver's fiduciary account for the Zilmil Defendants contains several million dollars, and the Receiver expects the Zilmil Defendants to transfer a significant amount of additional funds to the Estate now that the Court has entered the Consent Final Judgment against them, the Receiver will have sufficient funds in the Estate to cover the fees and costs he will incur in connection with pursuing recovery claims based on transfers from the those Defendants.

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 fifth and sixth reporting periods (the third and fourth quarters of 2018).

³ On November 9, 2018, the Receiver and his counsel filed a notice in which the Receiver proposed that he and his lead counsel (Damian & Valori, LLP) would be compensated on a contingency fee basis for their time expended after September 30, 2018, in connection with seeking to recover assets for the benefit of the Citrades Defendants' Estate. *See* ECF # 182. At the hearing on November 13, 2018, the Court treated the Receiver's notice as a motion and denied approval of the proposed contingency fee arrangement at that time.

⁴ Since his appointment, the Receiver has recovered approximately \$120,000 of the funds of Citrades Defendants. Nearly all of those funds were used to pay the administrative fees and costs of the receivership Estate, pursuant to the Court's Orders approving the Receiver's Fee Applications.

The Receiver has complied with the Court's directives during this Reporting Period, as demonstrated in this Report (which includes the fourth quarter of 2018). During the prior reporting period, the Court directed the Receiver to file a report advising the Court of the Receiver's projected expenses for the fifth and sixth application periods (July 1, 2018 – December 31, 2018) so the Court could determine how to proceed. In accordance with that Order, during this Reporting Period, the Receiver 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 (Sixth) Reporting Period, which period the Receiver has extended to include the first quarter of 2019 for the sake of efficiency, the fees and costs incurred by the Receiver and his professionals during the period of July 1, 2018 – December 31, 2018 are well within the budget proposed in that Report. Indeed, the Receiver and his professionals only incurred approximately \$15,000 in fees and costs during that period and incurred approximately \$5,000 in fees and costs for the period of January 1, 2019 – March 31, 2019, the total of which is significantly less than the total amount of interest that the Receiver's fiduciary accounts earned during the Reporting Period. The Receiver will seek approval, payment and reimbursement of those fees and costs in his forthcoming sixth fee application.

IV. CASH ON HAND AND ADMINISTRATIVE EXPENSES

At the conclusion of the Reporting Period, the Receiver held a total of \$5,595,726.35 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.	\$5,595,432.73
Jason Scharf	\$293.59
<i>Total</i>	<i>\$5,595,726.35</i>

See Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **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 1st day of May, 2019.

/s/ Kenneth Dante Murena
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of May, 2019, 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