

**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.

RECEIVER'S TENTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the “Receiver”) in the above-captioned enforcement action, submits his Tenth Status Report setting forth his activities and efforts to fulfill his duties under the orders pursuant to which he was appointed for the sixth-month time period of July 1, 2020 through December 31, 2020 (the “Reporting Period”).¹

I. INTRODUCTION

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

- A. Marshalling and preserving the assets of the Defendants, including (i) seeking imposition of a constructive trust over assets of Zilmil, Inc. which Defendant Shah claims are exempt, and (ii) completing the

¹ On July 27, 2020, the Court ordered the Receiver to file status reports covering six month reporting periods. ECF No. 299 at 1.f.

- liquidation and/or transfer to the Estate of all known assets and funds of the Zilmil Defendants,² bringing in \$1,906,751.52 to the Estate's fiduciary account, to maximize the funds from which distributions will be made pursuant to the Court-approved claims process;
- B. Pursuing recovery claims against relatives, insiders and/or affiliates who received transfers from the Zilmil Defendants without providing reasonably equivalent value;
 - C. Administering the initial phase of the Court-approved claims process, including disseminating an initial and follow up notice of claims process, working with the noticing and claims agent to prepare, refine and monitor the online portal and claim form to which potential claimants were directed to participate in the claims process and submit their claims, conferring with claimants and potential claimants to aid them in the process of submitting claims, and processing the claims that were submitted; and
 - D. Performing various administrative tasks, including without limitation preparing and filing the Receiver's ninth status report and ninth fee application.

² 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., 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."

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

A. The Receiver's Quarterly Fees and Expenses Budget

The following recovery efforts undertaken by the Receiver and his professionals are being carried out 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, among other things, granted the Receiver the power and authority to marshal the assets of the Zilmil Defendants, to collect the restitution obligations of the Zilmil Defendants, and to pursue recovery claims against third parties and insiders who received funds from those Defendants. 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.

During the Reporting Period the Receiver was to employ even greater efforts, devote additional resources and incur significant expenses to complete the asset recovery phase of this receivership and commence the claims administration phase by: (i) litigating the fraudulent transfer case against Defendant Shah's family; (ii) recovering those assets purchased with Zilmil Inc.'s business proceeds from Defendant Shah and Intervenor Eric Shah; (iii) collecting Defendants Shah's and Zilmil, Inc.'s

respective restitution obligations; and (iv) carrying out the Court-approved noticing and claims process, including sending out notices to all potential claimants and receiving and processing claims. Thus, upon the Receiver's motion, the Court approved a quarterly cap for the Receiver and his attorneys' fees and costs of \$150,000 for the second quarter of 2020 and \$100,000 for the third quarter of 2020. ECF No. 299.

Further, the Court approved a \$75,000 budget for Phase One of the claims process, and later approved the Receiver's using the then-remaining balance of the \$75,000 Phase One budget (approximately \$45,000), to pay any and all reasonable fees and costs associated with Phase One of the claims process (including without limitation communicating with claimants and potential claimants through email and/or telephone to assist with the filing of claims and receiving claims and supporting documentation) and Phase Two of the claims process (including without limitation communicating with claimants regarding their claims, processing their claims, and generating and providing to the Receiver reports related to the claims process). ECF No. 318 at ¶ 3.

Further, the Court authorized the Receiver to use funds in his fiduciary account for the Receivership Estate, up to an additional \$25,000, to pay the reasonable fees and costs associated with Phase Two of the claims process (including without limitation communicating with claimants regarding their claims, processing their claims, and generating and providing to the Receiver reports related to the claims process). *Id.* at ¶ 4. Finally, the Court set a budget for the work of the Receiver and his professionals

unrelated to the noticing and claims process for the fourth quarter of 2020 at \$50,000.

Id. at ¶ 5.

During the Third Quarter of 2020, the Receiver expended \$85,313.31 in fees and costs, and during the Fourth Quarter of 2020, the Receiver expended \$40,279.65 in fees and costs.

B. Marshalling and Preserving Defendants' Assets

i. Zilmil Defendants' Accounts and Assets

During the Reporting Period, the Receiver worked to transfer to the Estate the funds in certain foreign and domestic investment accounts. As of the close of the Reporting Period, the Receiver had recovered and deposited into his fiduciary account a total of \$10,530,317.78.

a. Liquidation of Domestic and Foreign Investment Accounts

During the Reporting Period, with respect to Defendant Shah's accounts in Canada, TD Canada Trust transferred \$246,075.93 to the Receiver's fiduciary account for the Estate from accounts previously controlled by Defendant Shah. Also, Capital One transferred \$2,982.18 to the Estate from a frozen account under control of the Receiver, and Vystar Credit Union transferred \$8,769.34 to the Estate from a frozen account under the control of the Receiver that held a certificate of deposit that had not matured until the Reporting Period.

b. The Constructive Trust Motion and Defendant Shah's Request for Relief from Permanent Injunction

At the beginning of this Reporting Period, the only significant frozen assets of Defendant Shah that had not been transferred to the Estate were 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), all of which Defendant Shah claimed were exempt from the Receivership.³ Thus, the Receiver filed the Receiver's Motion for Imposition of Constructive Trust on Funds, Assets, and Real Property Traceable to Zilmil, Inc. (the "Constructive Trust Motion") seeking to impose a trust over the CUNA Mutual Account, the 529 Plan, the Policy and the Residence. ECF No. 268. Defendant Shah opposed that Constructive Trust Motion (ECF No. 279), and Eric Shah was permitted to intervene in this action in order to seek to protect his purported rights to the Residence. ECF No. 282.

Contemporaneously with the briefing of the Constructive Trust Motion, Defendant Shah filed a motion for partial relief from the Permanent Injunction. ECF No. 265. The Receiver filed a limited objection to Shah's motion to the extent that termination of the Receivership as to Shah's assets could preclude the Receiver from recovering assets of Zilmil, Inc. in the hands of Shah, or assets of Zilmil, Inc.

³ There were also minimal funds held in frozen accounts at Capital One and Vystar Credit Union, which were transferred to the Estate during the Reporting Period as discussed above.

transferred to Shah (or which Shah received from Zilmil, Inc. and subsequently transferred to other persons or entities). ECF No. 266.

After the Constructive Trust Motion and Shah's motion for relief from the Permanent Injunction were fully briefed, the Court held a hearing on July 24, 2020, took the motions under advisement, and urged the parties to participate in a global mediation -- to which the parties agreed. ECF 299.

The mediation was successful, and the Court approved the Receiver's settlement with Michael Shah. Accordingly, the Receiver's Motion for Constructive Trust was withdrawn with prejudice and Shah's motion for partial relief from the Permanent Injunction was granted consistent with the terms of the parties' settlement agreement. ECF 315. Subsequently, Shah made his settlement payments to the Receivership Estate totaling \$299,924.07.

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, and with the help of the Receiver's forensic accountant, during the previous 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 did not recover any further assets of the Citrades Defendants during the Reporting Period and is not aware of any other accounts of Defendant Scharf that may contain assets of the Receivership Estate.

C. 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/or litigation in connection with the recovery of fraudulent transfers of Zilmil, Inc. business proceeds to Defendant Shah's family members, insiders and/or affiliates for which reasonably equivalent value was not provided to Zilmil, Inc. Below is a description of the Receiver's efforts during the Reporting Period aimed at obtaining sufficient recoveries to satisfy Zilmil, Inc.'s restitution obligation and making significant distributions to the Zilmil Defendants' customers in the Court-approved claims process and distribution plan.

a. Shah Family Fraudulent Transfer Action

During the Reporting Period, the Receiver continued to pursue 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 (the "Shah Family Action") against Defendant Shah's family members (the "Shah Family") seeking recovery of the approximately \$8 million they had received from Zilmil, Inc. – plus Eric Shah's interest in the Jacksonville Residence. During the Reporting Period the Court held a hearing on the parties' motions for summary judgment and several other pretrial motions.

In July 2020, the Court removed the case from the trial calendar and referred the parties to mediation. After months of active litigation, an initial mediation and the completion of significant discovery, the Receiver and the Shah Family participated in this second mediation conference (and subsequent negotiations that were part of this second mediation) which resulted in an agreement to settle all matters between them. The Shah Family and the Receiver executed the Settlement Agreement on September 10, 2020 wherein the Shah Family agreed to pay the Receivership Estate \$1,347,500. The Court held a hearing on the Receiver's motion to approve the settlement, at which those who could be affected by the terms of the settlement and received notice of the hearing were provided an opportunity to comment on the proposed settlement. On November 11, 2020, the Court approved the Receiver's settlement with the Shah Family (ECF No. 316), and thereafter, the Shah Family paid the settlement amount of \$1,347,500. On December 8, 2020, the Court dismissed the Shah Family Action with prejudice.

b. Manoj Kumar Fraudulent Transfer Action

During the Reporting Period, the Receiver obtained a final judgment in the action he brought against Mr. Manoj Kumar and an affiliated company, Tejolaya Builders, Inc. ("Tejolaya Builders"), which did business with Zilmil, Inc. and collectively received more than \$400,000 from Zilmil, Inc. (the "Kumar Fraudulent Transfer Action"). *See Murena v. Kumar and Tejolaya Builders*, Case No. 3:19-cv-812-J-32JRK at ECF No. 23. Based upon the difficulties experienced by the Receiver in serving Mr. Kumar and Tejolaya Builders through The Hague Convention on Service

Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”), and their situs in the United Kingdom and India, respectively, the Receiver is exploring selling the final judgment in order to efficiently realize a recovery for the Estate.

c. Montello Marketing

During the Reporting Period, the Court approved the Receiver’s settlement with Montello Marketing. *See* ECF No. 299. And, Montello Marketing completed making its payments pursuant to that agreement.

ii. Citrades Defendants

During a previous reporting period, the Court denied the Receiver’s proposed contingency fee structure 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.⁴ The Court proposed a different contingency fee structure and asked the Receiver to notify the Court if he was willing to pursue the fraudulent transfer actions under the Court’s proposed structure. ECF No. 263. The Receiver informed the Court that he was

⁴ Given the lack of funds in the Citrades Estate to pay the fees and costs of pursuing such claims, during the prior reporting period, the Receiver proposed to the Court to investigate and pursue them on a contingency fee basis for the benefit of the defrauded customers. 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.

concerned with pursuing the fraudulent transfer claims due to the potential expiration of the statute of limitations on those claims and the difficulty in locating the third-party transferees after the passage of so much time since the transfers were made, and the significant costs and risks the Receiver and his professionals would need to bear in connection with pursuing those claims. ECF No. 274. Accordingly, the Receiver explained that he would not be renewing his motion to approve a contingency fee arrangement. *See id.* Under the circumstances, there is no reason to continue the Receivership with respect to the Citrades Estate, and the Receiver will file a motion to be discharged as Receiver of the Citrades Defendants.

D. Noticing and Claims Process and Distribution Plan and Communications with Potential Claimants

During the Reporting Period, the Receiver and his professionals devoted significant time and effort into the claims administration process. Pursuant to the Court's Order [ECF No. 253] 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 would provide notice of the claims process, formulating the online portal and claim form to which potential claimants would be sent to submit claims and supporting documentation, and identifying information that would assist potential claimants to determine if they are eligible to participate in the claims process, as necessary to fulfill the Receiver's fiduciary duties and comply with the directives of the Court's Orders.

On July 27, 2020, the Court authorized the Receiver to commence phase one of the noticing and claims process. *See* ECF No. 299.

In accordance with the Court's Orders, the Receiver, his counsel and the claims processing agent, Stretto, worked on providing notice of the claims process to potential claimants by August 19, 2020 and again on October 19, 2020, formulating the online portal and proof of claim form, gathering claims and supporting documentation from claimants, responding to inquiries from potential claimants, and reviewing all claims and supporting documentation submitted on or before the extended claims bar date of November 25, 2020 set by the Court. *See* ECF No. 253 as revised by ECF No. 273 (Order granting the Receiver's Motion to approve the noticing and claims process and distribution plan); ECF No. 318 (Order establishing claims process deadlines).

As the Receiver reported to this Court on October 20, 2020, in the Receiver's Report Regarding Phase One of the Noticing and Claims Process, and Proposed Budget, Schedule and Procedures for Phase Two of Claims Process and Budget for Fourth Quarter of 2020 [ECF No. 311] approved by this Court on November 16, 2020 [ECF No. 318], during phase one of the claims process, the Receiver and Stretto made every effort to ensure that the notice to potential claimants was sent to deliverable, valid email addresses and did not end up blocked by email hosts' automatic spam filters. In the notice, potential claimants were asked to visit the online portal and fill out the claim form, providing information that determined their eligibility before they were allowed to submit claims and upload supporting documents, thereby limiting the number of claims and documentation the Receiver and the claims agent received and

processed. Potential claimants were also allowed to send inquiries to an email address manned by Stretto, and the Receiver formulated standard responses to those inquiries that were then disseminated by Stretto. Potential claimants with more in-depth inquiries were directed to the Receiver's counsel who assisted them in filing online claims, calculating net losses and uploading the appropriate supporting documentation.

Accordingly, during the electronic noticing process, the Receiver's noticing and claims agent, Stretto, successfully delivered 1,076,959 emails to potential claimants, with an email open rate of 3.99% and a bounce-back rate of 8.14%. The noticing process was completed by August 19, 2020, as previously reported to this Court. *See* August 19, 2020 Notice of Compliance and Dissemination of Notice of Claims Process, ECF No. 304.

Further, in connection with a notice sent to claimants regarding the proposed settlements with Defendant Shah and his family members, which the Receiver served on all potential claimants by October 20, 2020 in accordance with the Court's October 6, 2020 Order [ECF No. 309], the Receiver included additional information regarding the claims process with a link to the online claims portal. ECF No. 310. Those email notices were sent through an enhanced email platform and designed to avoid spam and junk email boxes, pass through the firewalls of various email domains, instill

confidence in the legitimacy of the process, and encourage potential claimants to participate and submit claims.⁵

The Receiver was authorized to accept and process claims submitted by potential claimants through November 25, 2020. ECF 318. As of the November 25, 2020 claims bar date, the Receiver received 624 completed and executed claim forms with at least some supporting documentation attached, asserting claims totaling \$9,649,019.12. Towards the end of this Reporting Period, the Receiver's claims agent started reviewing those 624 claims. Stretto informed the Receiver that many of those completed claims were submitted with minimal or completely irrelevant documentation. The Receiver instructed Stretto not to review unsupported claims which were invalid pursuant to the requirements of the claims process, as any review would merely waste the Estate's resources. Those unsupported claims were summarily disallowed in their entirety and potential claimants were notified of that disallowance by email sent from Stretto on or before January 25, 2021.⁶

During the initial review process, the Receiver determined that 121 claims met the criteria to be allowed or partially allowed claims resulting in a total allowed claim

⁵ The Receiver believes that many of the emails that Stretto sent out were delivered to potential claimants' spam and junk email inboxes and/or were ignored by claimants who are already suspicious of all communications concerning binary options trading. Indeed, some of the potential claimants responded to Stretto expressing their distrust of the email notice and/or directing Stretto to cease communicating with them.

⁶ Pursuant to the claims process schedule established by the Court, claimants may submit objections to the Receiver's initial determinations on or before February 23, 2021. *See* ECF No. 318 at p. 3.

amount of **\$3,631,075.44**. Thus, after the end of the Reporting Period, on January 25, 2021, the Receiver, through Stretto, sent out his initial determinations of allowed and partially allowed claim amounts to claimants.

All claims with partially allowed and disallowed claims will now have until February 23, 2021 to seek reconsideration of the Receiver's initial determinations by sending an email or letter to the Receiver's counsel. The Receiver expects (based on experience in other receivership claims processes) that approximately 10% of the claimants holding disallowed claims will seek reconsideration and provide additional supporting documentation which the Receiver will review and consider, and will result in an increase of the total amount of allowed claims.

After resolving any and all objections to the Receiver's determinations, perhaps through appeals to this Court, the Receiver will report the final determinations to the Court and request authority to make a distribution to all claimants with allowed and partially allowed claims pursuant to those final determinations. In seeking Court approval of the claims process and distribution plan, the Receiver had originally proposed, after the final determinations of all claims, to seek Court approval 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, after the asset recovery phase of the Receivership and payment of all administrative expenses of the Estate, the Receiver proposed to file a motion seeking Court approval of a final distribution of the remaining cash on hand to the allowed claimants. Because, however, at this time there is significantly more cash on hand in the Estate than the expected total amount of all

allowed and partially allowed claims, the Receiver, after the amounts of all claims are finally determined, will seek Court approval to make one distribution to claimants with an allowed or partially allowed claim for the full amounts of those allowed claims.

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 with knowledge of the Receivership and CFTC enforcement action, apprised of the status of same, 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 and distribution plan. The Receiver informed them of the status and directed them to the above-referenced website for further information. The Receiver also updated the potential claimants lists used for the claims process to include those customers and their current contact information.

E. 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 ninth reporting/application period, covering the five-month period from February 1, 2020 through June 30, 2020. *See* ECF No. 295 (Report) and ECF No. 308 (Application). In addition, soon after the filing of this Tenth Status Report, the Receiver will file a fee application seeking approval of and authority to pay the fees and expenses incurred during this Reporting Period.

III. CASH ON HAND, INTEREST EARNED, RECEIPTS AND DISBURSEMENT

After payment of the Court-approved administrative expenses of the Estate for the first through the ninth reporting/application periods, the total amount of funds in the Receiver's fiduciary account for the Zilmil Defendants maintained at East West Bank, including interest earned, is \$10,530,317.78 as of the end of the Reporting Period (December 31, 2020). *See* Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **Exhibit A**. During the Reporting Period, the Receiver recovered and deposited into this fiduciary account \$1,906,751.52 from the Zilmil Defendants and their affiliates, and claims brought against various parties, and earned \$449.14 in interest on all funds held in that account. The disbursements by the Estate were for payment to Stretto for the noticing and claims process, to the Receiver, his counsel, and expert witnesses in this case and the Clawback Cases, and for maintenance of the Zilmil email servers. *See id.*

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 29th day of January, 2021.

/s/ Kenneth Dante Murena
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29th day of January, 2021, 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