

**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 THIRTEENTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the "Receiver") in the above-captioned enforcement action, submits his Thirteenth 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 January 1, 2022 through June 30, 2022 (the "Reporting Period").¹

I. INTRODUCTION

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

- A. Completing the Court-approved distribution process, assisting claimants in receiving their distribution payments, and winding down the Receivership Estate; and

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.

- B. Performing various administrative tasks, including without limitation preparing and filing the Receiver's Twelfth Status Report and Twelfth Fee Application.

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

A. Marshalling and Preserving Defendants' Assets

As of the close of the Reporting Period, the Receiver's fiduciary account had a total balance of \$5,307,383.89. The Receiver did not identify or recover any new funds or assets of the Defendants during the Reporting Period.

B. Recovery Claims Against Relatives, Affiliates and Third Parties

i. Zilmil, Inc. Defendants

During previous reporting periods, the Receiver and his counsel investigated, pursued and resolved claims against Defendant Shah's relatives for the recovery of significant fraudulent transfers of Zilmil, Inc.'s business proceeds and investor funds.

Further, during a prior reporting period, the Receiver obtained a final judgment for recovery of fraudulent transfers for \$400,000 against Mr. Manoj Kumar and an affiliated company, Tejolaya Builders, Inc. *See Murena v. Kumar and Tejolaya Builders*, Case No. 3:19-cv-812-J-32JRK at ECF No. 23. The Receiver is exploring selling that final judgment rather than seeking to execute on it given that the judgment debtors are located in India. When the Receiver receives a reasonable offer to purchase the judgment, he will present it to the Court for approval.

ii. Citrades Defendants

The Receiver was discharged as Receiver for the Citrades Defendants, pursuant to this Court's Order on April 9, 2021. ECF No. 324.

C. Distribution Plan and Communications with Claimants

In prior reporting periods, the Receiver, his counsel and his distribution agent, Stretto, carried out the Court-approved Claims Process and Distribution Plan. ECF No. 318. The Receiver and his professionals assisted all claimants who expressed an interest in submitting and proving their claims to maximize the amount of legitimate allowed claims.

On June 29, 2021, the Court entered an Order (the "Distribution Approval Order") approving the Receiver's proposed 100% distribution to 141 claimants holding allowed claims totaling \$4,589,356.59. ECF No. 326. Shortly thereafter, the Receiver also requested, and the Court approved, a late-filed claim in the amount of \$3,000. ECF Nos. 330 (Motion) and 331 (Order).

On or about July 29, 2021, Stretto, the Receiver's distribution agent, prepared and mailed checks to all claimants holding allowed claims in accordance with the Distribution Plan. ECF No. 326. Unfortunately, many claimants were unable to cash their checks due to bank closures and lockdowns in countries all over the world due to the COVID-19 pandemic. As a result, the Receiver canceled many of the distribution checks and sent the distributions by wire transfer. Also, certain international claimants simply did not receive checks and did not inform the Receiver that their checks were missing. The Receiver's professionals attempted to contact all claimants whose

distribution checks were uncashed, most of whom responded, and the Receiver replaced those checks with wire transfers.

Six claimants, five of whom reside in foreign countries, have not cashed the distribution checks the Receiver sent to the physical addresses the claimants provided in their claim forms and have not responded to the three follow-up emails the Receiver sent to the email addresses the claimants provided in their claim forms. As of the close of the Reporting Period, there was \$61,100.36 remaining in outstanding distributions resulting from six uncashed, expired checks. The Receiver will make one final attempt to contact these claimants by sending a trackable letter advising them of the uncashed distribution checks, and if they respond the Receiver will request wire instructions and send their distributions by wire transfer. If the Receiver does not receive a response within a reasonable period of time, the Receiver will deem their claims abandoned and will transfer the unused funds from the distribution account to the Estate's primary fiduciary account.

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 claimants with allowed claims, apprised of the status of the Receivership and CFTC enforcement action, posting Court filings, notices, and orders, and answering frequently asked questions.

D. Disposition of Funds Remaining in the Estate Following Distribution to Claimants

In the Court's Distribution Approval Order, the Court ordered the Receiver to provide the Court with a status update on the potential disposition of the remaining funds in the Estate after the distribution on or before September 1, 2021. ECF 326 at ¶ 3. In doing so, the Court instructed the Receiver to consider whether the remaining funds, or a portion thereof, should be treated in the nature of a *cy pres* award. *Id.*

On September 1, 2021, the Receiver filed his Status Update Concerning Proposed Disposition of Funds Remaining in the Estate Following Distribution to Claimants. ECF No. 329. The Receiver advised the Court that after payment of the Court-approved fees and costs the Receiver and his professionals incurred to date, the Receiver estimates that there will remain approximately \$5.25 million in the Estate.

As is detailed in the Receiver's proposal, as the distribution to allowed claimants marked substantially the end of the Receiver's work in this case, the Receiver proposed that the remaining Estate funds be (i) used to pay Michael Shah's Civil Monetary Penalty in the amount of \$1 million, (ii) used to pay \$2.25 million of Zilmil, Inc.'s outstanding obligations under this Court's Orders (including a \$4 million Civil Monetary Penalty), and (iii) transferred to another receivership estate in a similar CFTC enforcement action against binary options affiliate marketers who had entered into Consent Permanent Injunctions (the "AIP/Gasher Estate"), to cover an approximately \$2 million shortfall and increase the percentage recovery of the allowed claimants in that estate who were subject to the same fraudulent binary options affiliate

marketing campaigns as those to which the Zilmil, Inc. claimants were subject. ECF No. 329.

Now that the distribution process has been completed in this receivership, the Receiver is assessing the status of AIP/Gasher Estate and the extent of its shortfall for distributions to allowed claimants. The AIP/Gasher allowed claimants will soon receive additional distributions from another related binary options affiliate marketing receivership (arising from the enforcement action *CFTC v. Daniel Fingerhut, Digital Platinum, Inc., et al.*, Case No. 1:20-cv-221887-DPG) (the “Fingerhut Estate”)² that will reduce but not eliminate the AIP/Gasher Estate’s shortfall. Once the AIP/Gasher claimants receive the additional distributions from the Fingerhut Estate and the extent of the AIP/Gasher shortfall is quantified, the Receiver will seek leave of this Court to hold an amount of funds in this Estate in trust for the benefit of the AIP/Gasher Estate to the extent of its shortfall, to distribute (from the amount held in trust) to the AIP/Gasher Estate’s allowed claimants only as much as is necessary to make those allowed claimants whole, and to remit any remainder to the CFTC to further pay down Zilmil, Inc.’s Civil Monetary Penalty.

² The claims process in this related binary options receivership and CFTC enforcement action against Daniel Fingerhut, Digital Platinum, Inc., *et al.* has not yet been completed and the distributions to allowed claimants have not yet been made. As such, the Receiver cannot yet determine how much of the funds in the Fingerhut Estate will be available to cover the AIP/Gasher Estate’s shortfall.

E. Receiver's Status Reports and Fee Applications

During this Reporting Period, the Receiver prepared and filed a Status Report and a Fee Application for the twelfth reporting/application period, covering the six-month period from July 1, 2021 through December 31, 2021. *See* ECF No. 332 (Report) and ECF No. 333 (Application). Soon after filing this Thirteenth 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 twelfth reporting/application periods, and the distribution to allowed claimants, the total amount of funds in the Receiver's fiduciary account for the Zilmil, Inc. Defendants maintained at East West Bank, including interest earned, is \$5,307,383.89, as of the end of the Reporting Period (June 30, 2022).³ *See* Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **Exhibit A**. During the Reporting Period, the Receiver earned \$437.29 in interest on all funds held in that account, but, given the Federal Reserve Bank's increasing interest rates during the Reporting Period, East West Bank has agreed to increase the interest rate for the fiduciary account by 17 basis points, which will

³ This amount does not include the funds remaining in the Estate's distribution account at East West Bank.

increase the interest the Estate will earn on the remaining funds in the Estate until they are distributed.

The disbursements by the Estate were for payment to Stretto for the claims and distribution process, to the Receiver, his counsel, and the Receiver's tax accountants, and for maintenance of the Zilmil email servers, pursuant to prior Orders of this Court.

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 28th day of July, 2022.

/s/ Kenneth Dante Murena
Kenneth Dante Murena, Esq.
Court-Appointed Receiver
Florida Bar No. 147486
DAMIAN & VALORI, LLP
1000 Brickell Avenue, Suite 1020
Miami, Florida 33131
Telephone: (305) 371-3960
Facsimile: (305) 371-3965
Email: kmurena@dvllp.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28th day of July, 2022, 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, Esq.
Court-Appointed Receiver