

**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 TWELFTH STATUS REPORT

Kenneth Dante Murena, the court-appointed Permanent Receiver (the “Receiver”) in the above-captioned enforcement action, submits his Twelfth 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, 2021 through December 31, 2021 (the “Reporting Period”).¹

I. INTRODUCTION

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

A. Administering the Court-approved claims and distribution process, assisting claimants in receiving their distribution payments, 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.

formulating plans and proposals for completing the Receiver's work and winding down the Receivership estate; and

- B. Performing various administrative tasks, including without limitation preparing and filing the Receiver's eleventh status report and eleventh 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 \$5,356,559.77. The Receiver did not identify or recover any new funds or assets of the Defendants during the Reporting Period.

B. Recovery Claims Against Relatives, Insiders, Affiliates and Third Parties

i. Zilmil Defendants

During previous reporting periods, the Receiver and his counsel investigated, negotiated settlements, and pursued claims through litigation in connection with the recovery of fraudulent transfers of Zilmil, Inc. business proceeds to various third parties. All such claims were resolved during the prior reporting period.

During a prior reporting period, the Receiver obtained a final judgment 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 in fraudulent transfers 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 that final judgment rather than seeking to execute on it. When the Receiver receives a reasonable offer to purchase the judgment, he will present it to the Court for approval.

ii. Citrades Defendants

For reasons detailed in the Receiver’s Tenth Status Report (ECF No. 319 at p. 10-11), during the prior reporting period, the Receiver filed a motion to be discharged as Receiver for the Citrades Defendants (ECF No. 323), which the Court granted on April 9, 2021. ECF No. 324.

C. Distribution Plan and Communications with Claimants

In the prior reporting period, 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 approving the Receiver’s proposed 100% distribution to 141 claimants holding allowed claims with a total amount of \$4,589,356.59. ECF No. 326. Shortly thereafter, the Receiver also requested, and the Court approved, a late-filed claim for \$3,000. ECF Nos. 330 (Motion) and 331 (Order).

On or around July 29, 2021, Stretto, as distribution agent for the Estate, 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. Moreover, due to COVID-19 most banks in Australia, South Africa and throughout Europe stopped accepting paper checks and claimants informed the Receiver that they could only receive their distributions by electronic means. In addition, many claimants received their checks after the 90-day expiration period due to mail slowdowns resulting from the COVID-19 lockdowns and labor shortages, and their banks would not accept the checks. As a result, the Receiver canceled many of the distribution checks and worked with claimants to obtain and verify their bank's wire instructions 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. Despite the additional effort required to make the distributions, it allowed claimants to receive payments that would not have been delivered otherwise without significantly increasing the cost of the distribution process.²

² The Receiver has not exceeded the initial \$75,000 Court-approved budget for the noticing process much less the additional \$25,000 budget for the claims processing and distribution process.

Fifteen claimants have not cashed their distribution checks or responded to the Receiver's professionals, so the Receiver's professionals will continue their efforts to contact them by physical mail, email and telephone to obtain wire instructions or other electronic payment instructions. As of the close of the Reporting Period, there was \$128,248.81 remaining in outstanding distributions resulting from 15 uncashed, expired checks. If the Receiver is unable to obtain a response from these claimants within 30 days, the Receiver will likely deem their claims abandoned and return the funds to the Estate.³

In addition, at the time of making the distributions, the Receiver conducted an additional review of the three largest allowed claims and requested additional documentation and personal information from two claimants to confirm their identity and to verify the accuracy and authenticity of their supporting documents. The Receiver determined that one claimant needed to submit additional documentation to support his claim. The Receiver asked Stretto to work with this claimant to obtain supporting documentation of his losses from third party binary options sites, credit card companies and/or banks. After several months of communications, the claimant produced additional supporting documentation of his binary options trading activity that confirmed his allowed claim amount. The Receiver therefore authorized the payment of that claim by wire transfer after the close of the Reporting Period.

³ This \$128,248.81 remains in the Receiver's distribution account at East West Bank from which all distributions to allowed claimants have been made.

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

On May 19, 2021, the Receiver sought approval of a proposed 100% distribution to claimants holding allowed claims. ECF No. 325. The Court approved that that proposed distribution on June 29, 2021. ECF No. 326 (the “Distribution Approval Order”). 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.*

After payment of the Court-approved fees and costs the Receiver and his professionals incurred in connection with the claims process and other receivership matters through June 30, 2021 (the Fee Application for which was filed on August 30, 2021) and incurred thereafter through the conclusion of the receivership in connection with the distribution to allowed claimants and winding down the Estate (which the Receiver conservatively estimates will total approximately \$175,000), the Receiver estimates that there will remain approximately \$5.25 million in the Estate.

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.

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 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 claimants were subject. ECF No. 329.

Once the Distribution process is completed, the Receiver plans to seek leave of Court to hold the funds in trust for the benefit of the AIP/Gasher Estate to the extent that Estate has the expected shortfall. If, however, the AIP/Gasher allowed claimants 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) that reduce or eliminate the shortfall, the Receiver will propose to distribute (from the \$2 million held in trust) to

the AIP/Gasher Estate's allowed claimants only as much as is necessary to make those allowed claimants whole, and will remit any remainder to the CFTC to further pay down Zilmil's Civil Monetary Penalty.

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 eleventh reporting/application period, covering the six-month period from January 1, 2021 through June 30, 2021. *See* ECF No. 327 (Report) and ECF No. 328 (Application). Soon after filing this Twelfth 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 eleventh reporting/application periods, and the distribution to allowed claimants, the total amount of funds in the Receiver's fiduciary account for the Zilmil Defendants maintained at East West Bank, including interest earned, is \$5,356,559.77 as of the end of the Reporting Period (December 31, 2021).⁴ *See* Reconciliation of Receipts and Disbursements of Receivership Accounts, attached hereto as **Exhibit A**. During the Reporting Period, the Receiver earned \$307.99 in interest on all funds held in that account. And, the disbursements by the Estate were

⁴ This amount does not include the \$128,248.81 remaining in the Estate's distribution account at East West Bank.

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 31st day of January, 2022.

/s/ Kenneth Dante Murena
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 31st day of January, 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