

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**BRENDA SMITH, BROAD REACH
CAPITAL, LP, BROAD REACH
PARTNERS, LLC, and BRISTOL
ADVISORS, LLC,**

Defendants.

C. A. No. 2:19-cv-17213 (MCA)

Return Date: Nov. 1, 2021

**NOTICE OF MOTION OF RECEIVER, KEVIN D. KENT, ESQUIRE,
TO APPROVE A SETTLEMENT RESOLVING THE RECEIVER'S APRIL
9, 2021 MOTION TO DETERMINE OWNERSHIP OF TAYLOR
TRADING, LLC ACCOUNT**

PLEASE TAKE NOTICE that the undersigned, on behalf of the Receiver, Kevin D. Kent, Esq. will move before the Honorable Madeline Cox Arleo, U.S.D.J., United States District Court for the District of New Jersey, Martin Luther King Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, on November 1, 2021, or as soon thereafter as the Court permits, at a date and time to be determined by the Court, to approve a settlement resolving the Motion to Determine Ownership of Taylor Trading, LLC Account.

PLEASE TAKE FURTHER NOTICE THAT, in support of this Motion, the undersigned will rely upon the accompanying Memorandum of Law, which is incorporated herein by reference.

PLEASE TAKE FURTHER NOTICE that the undersigned requests that the proposed form of Order submitted herewith be entered by the Court.

Respectfully submitted,

Dated: 10/8/2021

s/ Robin S. Weiss
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Return Date: Nov. 1, 2021

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER,
KEVIN D. KENT, ESQUIRE, TO APPROVE A SETTLEMENT
RESOLVING THE RECEIVER'S APRIL 9, 2021 MOTION TO
DETERMINE OWNERSHIP OF TAYLOR TRADING, LLC ACCOUNT**

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Dated: 10/8/2021

Pursuant to the Court's Order Appointing Receiver dated June 29, 2020, Kevin D. Kent, Esq., Receiver, hereby moves this Court to approve a settlement that resolves the Receiver's April 9, 2021 Motion to Determine Ownership of an account held in the name of Taylor Trading, LLC (Dkt. No. 76). The Receiver believes that the proposed settlement is in the net best interest of the Receivership Estate in that it will result in a recovery of more than \$250,000 for the Receivership Estate while avoiding the risk and cost of further litigation. In support of this Motion, the Receiver states as follows:

The Receiver, Kent D. Kent, Esq., has been appointed by Order of this Court dated June 29, 2020 ("Receivership Order"), to assume control of, marshal, pursue and preserve the Receivership Assets. (Dkt. No. 22). On April 9, 2021 the Receiver filed a Motion to Determine Ownership of Taylor Trading, LLC Account (Dkt. No. 76) (the "Taylor Trading Motion") in which the Receiver sought an order declaring that certain frozen account funds belonged to the Receivership, to the exclusion of all other creditors.

The Taylor Trading account was frozen by this Court at the inception of the *SEC v. Smith* matter, and is identified in the Receivership Order as an asset of the Receivership Estate. However, Paragraph 3 of the Receivership Order also recognized that "certain third parties, including Taylor Trading LLC...have expressed an interest in or ownership of certain assets. Nothing in this Order shall

be considered an adjudication of such asserted rights or claims, and it is without prejudice to such claims being asserted in this Court.”

As more fully set forth in the Taylor Trading Motion, the Receiver’s investigation revealed that Defendant Brenda Smith (“Smith”) transferred ownership of the Taylor Trading account to Scott Koppenheffer in or around October of 2017, purportedly as payment for services he provided to CV Brokerage. The Receiver traced the majority of the funds deposited to the Taylor Trading account to Broad Reach Capital investor deposits. Accordingly, the Taylor Trading Motion sought a declaration that Scott Koppenheffer had no right to the remaining funds in the account and that the entire balance could be transferred to the Receiver for the benefit of the Receivership Estate.¹ The Receiver twice stipulated to provide Mr. Koppenheffer additional time to respond to the Taylor Trading Motion. (*See* Dkt. Nos. 80 & 84). However, Mr. Koppenheffer did not respond to the Taylor Trading Motion.

Mr. Koppenheffer is also a defendant in a separate lawsuit filed by Surefire Dividend Capture, LP (“Surefire”). (*See Surefire Dividend Capture, LP v. Smith et*

¹ The Receiver had been communicating with counsel for Mr. Koppenheffer well in advance of filing the Taylor Trading Motion in an effort to reach an agreement as to ownership of the account and to avoid motion practice.

al., No. 2:19-cv-04088 (E.D. Pa.) (the “Surefire Action”).² Surefire is the largest investor victim of Smith’s fraudulent scheme. Surefire’s losses account for approximately 50% of all investor losses.

In consultation with the Receiver, Surefire agreed to resolve its claims against Mr. Koppenheffer in the Surefire Action in exchange for, *inter alia*, an assignment of all Mr. Koppenheffer’s rights (if any) to the Taylor Trading account. Surefire and Mr. Koppenheffer finalized a settlement agreement and executed an assignment of Mr. Koppenheffer’s rights to the Taylor Trading account to Surefire on September 14, 2021. The Receiver has obtained a copy of the settlement agreement and has confirmed that it has been fully executed. Accordingly, Surefire now controls whatever rights Mr. Koppenheffer previously had to oppose the Receiver’s Taylor Trading Motion.

The Receiver and Surefire have agreed to resolve the Taylor Trading Motion by splitting the approximately \$517,932 balance of the account evenly, with each receiving \$258,966.08. The Receiver and Surefire have further agreed that this amount will be deducted from any future distribution made by the Receiver to Surefire. This proposed payment to Surefire represents less than 1% of its total

² The Receiver recently received approval to join as a Plaintiff in the Surefire Action against other common defendants in that action, which include The Nottingham Company and Sanville & Company, which acted as fund administrator and auditor, respectively. (*See* Dkt. No. 117).

loss. The Receiver submits that the proposal to split the Taylor Trading account funds with Surefire is an equitable resolution of the dispute and in the net best interest of the Receivership Estate for two reasons.

First, the proposed settlement results in a meaningful recovery for the Receivership Estate while eliminating the inherent risk and cost of litigating the issue with Mr. Koppenheffer or Surefire. Absent the settlement, the Receivership Estate would need to expend additional resources to litigate the issue, which would reduce the value of any recovery. In addition, the proposed agreement eliminates the risk that the Court might determine that Mr. Koppenheffer's claims to some or all the Taylor Trading account funds are valid; in which case, the Receivership Estate would recover a lower amount or, possibly, nothing. However, if the Court approves the settlement, the Receivership Estate will recover over \$250,000 without additional risk or litigation costs, which benefits all the victims in this matter.

Second, Surefire's recovery under the settlement is unlikely to impact the ultimate distribution for other victims. Surefire is presently the largest investor victim of the Receivership Estate, with losses in excess of \$30 million, accounting for more than 50% of total known investor losses. As a result, and excluding any significant recoveries Surefire may receive from other sources, Surefire is likely to qualify for a future distribution from the Receivership Estate that will likely exceed

the amount of this payment. Because the Receiver will deduct the amount paid to Surefire in connection with this agreement from future distributions, Surefire is unlikely to receive any more money than it is entitled to in the distribution process. The proposed settlement benefits Surefire because it receives this payout now, earlier than other investors, and it avoids the litigation risk and collection risk in connection with its claims against Koppenheffer.

Accordingly, and for all the foregoing reasons, the Receiver respectfully requests an Order approving the proposed settlement with Surefire together with an order dismissing the Taylor Trading Motion as moot. The Securities and Exchange Commission does not object to this motion.

Respectfully Submitted,

Date: 10/8/2021

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**ORDER CONFIRMING OWNERSHIP OF TAYLOR TRADING, LLC
ACCOUNT PROCEEDS**

THIS MATTER having come before this Court upon the Motion of Receiver, Kevin D. Kent, Esquire, to Determine Ownership of Taylor Trading, LLC Account (Dkt. No. 76), and the Motion of Receiver to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account;

It is on this _____ day of _____, 2021,

ORDERED that the Receiver's Motion to Determine Ownership of Taylor Trading, LLC Account is **DISMISSED** as moot; and it is

FURTHER ORDERED that the Receiver's Motion to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account is **GRANTED**; and it is

FURTHER ORDERED that the Receiver may arrange for the transfer 50% of the balance of the Taylor Trading, LLC bank account maintained with PNC Bank at account number XXXXXX9588 to Surefire Dividend Capture, LP and 50% to the Receivership operating account free and clear of any claimed third-party interests.

BY THE COURT:

HONORABLE MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

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ADVISORS, LLC,**

Defendants.

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**CERTIFICATE OF
SERVICE**

I hereby certify, this 8th day of October, 2021, that I caused to be served a true and correct copy of the Notice of Motion of Receiver, Kevin D. Kent, Esquire, to Approve a Settlement Resolving the Receiver's April 9, 2021 Motion to Determine Ownership of Taylor Trading, LLC Account, and all documents in support thereof upon Plaintiff, Securities and Exchange Commission, through counsel of record, and Anthony Scott Koppenheffer, through counsel of record, and counsel of record for all other parties, by electronic filing pursuant to Fed.R.Civ.P. 5(b), and upon Defendant, Brenda A. Smith, on behalf of all defendants, via first-class mail, postage prepaid, as follows:

Brenda A. Smith
Permanent ID 2019-339640
CCIS# 07-571432

U.S. Marshalls Number 72832-050
Essex County Correctional Facility
354 Doremus Avenue
Newark, NJ 07105

s/ Robin S. Weiss
Robin S. Weiss, Esq.
Attorney for Receiver, Kevin D. Kent, Esq.