

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

SECURITIES AND EXCHANGE) C.A. No. 2:19-cv-017213 (MCA)
COMMISSION,)
)
Plaintiff,)
v.)
)
BRENDA SMITH, BROAD REACH)
CAPITAL, LP, BROAD REACH)
PARTNERS, LLC, and BRISTOL)
ADVISORS, LLC,)

Defendants.

**INTERESTED PARTY ALPHA CAPITAL'S OPPOSITION TO THE
RECEIVER'S MOTION FOR ORDER RESOLVING DISPUTED NON-
INVESTOR CREDITOR CLAIMS**

Alpha Capital Trading Group, LLC ("Alpha Capital") respectfully submits this Opposition to the Motion of Receiver, Kevin Dooley Kent, For Order Resolving Disputed Non-Investor Creditor Claims.

PRELIMINARY STATEMENT

Defendant Brenda Smith, through her brokerage firm, CV Brokerage, Inc., ("CV Brokerage") stole \$250,000 from Alpha Capital. Alpha Capital timely submitted its claim for this loss to the Receiver, which fully documented this loss. This Court should deny the Receiver's attempt to exclude Alpha Capital's valid receivership claims for the return of capital that was stolen in Defendants' scheme. The Receiver argues Alpha Capital's claim should be excluded based on the theory that Alpha Capital's \$250,000 loss may have resulted from its own trading activity. This theory has no basis in fact or law. Indeed, the documents provided to the Receiver show Alpha Capital's funds were not traded and were held in a segregated account. The Receiver --unlike Alpha Capital -- has unlimited access to all of the

Defendants' records to supports the Receiver's contention, but it offers the Court nothing, not a jot of evidence, not a single document, to substantiate its "trading loss theory." The Receiver's Motion as to Alpha Capital should be denied.

STATEMENT OF FACTS

A. Background

This action involves the alleged fraud of Defendant Brenda Smith and her purported investment fund, Broad Reach Capital, LP. According to the SEC, Brenda Smith solicited over \$100 million in investor capital into limited partnership interests in the Broad Reach Capital, LP fund. (ECF 1, "SEC Complaint" ¶2). According to the SEC, only a small fraction of investor money was actually deployed as promised and, instead, "the vast majority of the funds were moved through the bank accounts of entities Smith controls and ultimately used to, among other things, make her own personal investments and to repay other investors." (¶5). Investors were provided false performance statements and fabricated documents regarding the assets and investment valuations.

Among the entities Brenda Smith controlled was a broker-dealer firm, CV Brokerage, Inc. (CRD# 462 / SEC# 8-12429) ("CV Brokerage") (¶12). According to the SEC's Complaint, Brenda Smith used her various entities, including CV Brokerage, as her "alter-egos" and "controlled their brokerage and bank accounts, and every other aspect of the businesses." (¶20). In addition to the fraudulent investment fund, investors also lost money on deposit with CV Brokerage.

Alpha Capital is one such victim of Defendants' Scheme. Alpha Capital is a limited liability company organized under the laws of the Commonwealth of Pennsylvania with its headquarters in Haverford, Pennsylvania. Alpha Capital operates itself a proprietary retail trading account. Alpha Capital utilizes its proprietary trading technology for Alpha Capital to manage

quantitative algorithmic multi-strategy investments in equities, equity options, Exchange Traded Funds, opportunistically engaging in a broad array of trading strategies using mathematical, statistical, and technical methods.

B. Alpha Capital Opens an Account with CV Brokerage

In order to access the financial markets, Alpha Capital was required to affiliate with a broker-dealer firm who could buy and sell securities on its behalf. CV Brokerage, Inc. (“CV Brokerage”) is a FINRA-member broker-dealer firm owned and controlled by Defendant Brenda Smith. For years, Brenda Smith attempted to solicit Alpha Capital and its principals to open accounts at CV Brokerage and utilize its services.

Alpha Capital and its principals began performing due diligence on CV Brokerage and its CEO, Brenda Smith. This due diligence included ensuring that CV Brokerage and Brenda Smith were registered with the Financial Industry Regulatory Authority (“FINRA”) and a review of their FINRA BrokerCheck Reports. Comforted by the fact that CV Brokerage was registered and a public record search had revealed no significant red flags, Alpha Capital opened a retail trading account with CV Brokerage. It is undisputed that Alpha Capital was a brokerage account holder of CV Brokerage.

CV Brokerage agreed to provide Alpha Capital with access to the use of margin within its trading account. It was informed that it would be required to deposit money into a segregated account in order to support Alpha Capital’s brokerage activities. It was Alpha Capital’s understanding that the funds would be custodied in a segregated account held with The Industrial and Commercial Bank of China Financial Services LLC (CRD# 131487, SEC# 8-66471) (“ICBC”), the FINRA-member clearing broker utilized by CV Brokerage.

As far as Alpha Capital is aware, the deposited funds were segregated in a separate account and never comingled with any other fund or investment. It is undisputed that Alpha

Capital was not an investor in Defendants' fraudulent fund. Alpha Capital never deposited any money for an investment in the fraudulent fund and never signed any documents relating to an investment in the fraudulent fund, at no point received any information about the fund, and never signed a subscription agreement for any investment in the fund. Alpha Capital never participated in any distributions of the fraudulent fund nor received profits or losses from fund activities. Rather, Alpha Capital's funds were always maintained in a broker-dealer account with CV Brokerage, separate and apart from any other fund or investment.

C. Alpha Capital Deposits \$4 Million in a Segregated Account

On or about October 19, 2018, Alpha Capital deposited \$4 million with CV Brokerage in its Capital Deposit Account, custodied with ICBC (the "Non-Traded Account"). Typical of a brokerage relationship, the Non-Traded Account received a brokerage customer account number. Alpha Capital also received financial statements for its account at CV Brokerage. Further, prior to the SEC's action, Alpha Capital was able to access brokerage account statements electronically, reflecting the relationship.

The \$4 million deposited in the Non-Traded Account never fluctuated in value because the assets in the Non-Traded Account were never traded. The Non-Traded Account never increased in value (reflecting profits) or decreased in value (reflecting losses) due to any trading activity. This is because the assets in the Non-Traded Account were not correlated to any investment activity in any other accounts tied to Alpha Capital.

In late 2018 and early 2019, Alpha withdrew \$3.75 million of funds it had on deposit at CV Brokerage in its normal course of business. (Exhibit 1, Alpha Capital Funding & Withdrawal Activity Detail). The funds were withdrawn by Alpha Capital in compliance with CV Brokerage's policies and procedures and transferred to entities affiliated with Alpha Capital and its principals, at the instruction of Alpha Capital. (Id.).

D. CV Brokerage Restricts Trading Alpha Capital's \$250,000 on Deposit is Not Returned

Alpha Capital traded in its account with CV Brokerage for approximately six months (the "Traded Account"). All trading was self-directed and all investment decisions were made by Alpha Capital. Alpha Capital was charged commissions paid to CV Brokerage in relation to its trading activity. Further, the trading activity was completely separate and distinct from the funds on deposit in its Capital Deposit Account. The value of the Capital Deposit Account did not fluctuate or change in relation to any trading by Alpha Capital.

In mid-2019, CV Brokerage advised Alpha Capital that there would be trading hold which prevented trading in all customer accounts custodied at CV Brokerage. This trading hold remained in effect for 4 months. During this time, Alpha Capital was unable to trade securities with CV Brokerage. The \$250,000 in Alpha Capital's Non-Traded Account remained static. As a result of the inability to trade, on July 23, 2019, Alpha Capital's principals reached out to Brenda Smith seeking the return of the \$250,000 remaining at CV Brokerage. Despite these demands, CV Brokerage failed to return the funds to Alpha Capital. Shortly thereafter, the SEC brought its action against Defendants.

Prior to the SEC's action, Alpha Capital was able to access documents and statements relating to its accounts at CV Brokerage electronically. Following the SEC's action, Alpha Capital no longer had the ability to log into its account with CV Brokerage to access account statements and related documents.

E. Alpha Capital Provides the Receiver with Additional Information Regarding Its Claim

The Court, pursuant to a June 29, 2020, Receivership Order, appointed a Receiver "for the purposes of marshaling and preserving all assets" of Defendants "and affiliated companies owned and controlled by one or more Defendants, including CV Brokerage Inc."

(Receivership Order at p. 1-2). The Receiver subsequently established a Claims Resolution Process to identify claims of creditors.

Through the Claims Resolution Process, the Receiver identified two types of potential receivership creditors: (1) investor creditors and (2) trade creditors. Investor creditors comprise of investors who invested in Defendants' fraudulent fund. Trade creditors comprise of individuals or entities who have claims against the receivership estate, but who did not invest in Defendants' scheme. Alpha Capital did not invest in Defendants' fraudulent scheme and is not an investor creditor. Rather, Alpha Capital is a trade creditor due to the fact that its funds were on deposit in a brokerage account, held at a SIPC-member broker-dealer firm and its funds in the brokerage account were lost or stolen, rather than the funds having been invested and lost in Defendants' fraudulent investment fund. Alpha Capital and its principals had no knowledge of or involvement in Defendants' fraudulent fund, whatsoever.

Alpha Capital timely submitted a Creditor Claim Form to the Receiver on May 5, 2022, seeking to recoup the \$250,000 it had lost. (Exhibit 2, Creditor Claim Form). After submitting its Creditor Claim Form, the Receiver sought additional information from Alpha Capital regarding its submission. On June 8, 2022, Alpha Capital, through counsel, provided a written response to the Receiver's inquiry regarding Alpha Capital's receivership claim. (Exhibit 3, June 2022 Letter). Alpha Capital provided the Receiver with a second submission on July 31, 2022, for further clarification of Alpha Capital's claims (Exhibit 4, July 2022 Letter).

LAW AND ARGUMENT

The Court entered an order establishing a claims procedure for creditors. Alpha Capital timely filed its claim and properly supported its claim with documentary evidence reflecting this loss. It is undisputed that Alpha Capital had \$250,000 in an account at CV

Brokerage which failed to return the funds. The Receiver's motion argues that that Alpha Capital's \$250,000 was "diminished in value" through its own trading activities. This argument is based on speculation and conjecture rather than on fact.

A. Alpha Capital Submitted Documentary Support that the \$250,000 Deposit Was Not Diminished Through Trading Activity

The documents and information available to the parties supports the contention that the \$250,000 in Alpha Capital's Non-Traded Account was not diminished by trading activities. The Receiver's primary argument is that "the diminution in value of the account **may** be a result of Alpha Capital's trading activity as it is unlikely that Alpha Capital's starting and ending balance would remain exactly \$4 million despite its admitted six months of trading activity within the account." (Motion at pp. 59-60) (emphasis supplied).

First, the \$4 million Alpha Capital deposited at CV Brokerage was in a segregated account and was not used as capital to place trades. If the Receiver's argument had merit, then one would expect the account to fluctuate, either in a positive or negative direction, equivalent to gains and losses made through trading activities. This is not the case here. The \$4 million on deposit was not deployed to trade and, as a result, the \$4 million account did not fluctuate in value, *i.e.*, there were no gains and no losses.

Second, the limited documents in Alpha Capital's possession confirm that the \$4 million deposit was held in a segregated account at ICBC Bank and was never comingled with any other trading accounts. Accordingly, there was no "diminution of value" through trading of the assets in the Non-Traded Account. Rather, the value of the Non-Traded Account was \$250,000, irrespective of any trading activity elsewhere. As previously stated, this is due to the fact that the Non-Traded Account's value was in no way correlated with any trading activity and its value was not dependent on any trading activity elsewhere.

Third, documents show that Alpha Capital was informed by Brenda Smith and CV Brokerage that it was unable to trade any accounts for a period of at least 4 months. As a retail customer, a broker-dealer firm is a necessary conduit to access the markets for security trading activity. Alpha Capital was unable to trade and, accordingly, the \$250,000 in its account was not diminished as a result of any trading activity. Alpha Capital believes that records of CV Brokerage in the Receiver's possession will confirm this.

There is no evidence, whatever, that the \$250,000 at issue was diminished through any trading activity of Alpha Capital. Rather, \$250,000 was the amount of funds that were remaining in the brokerage account, which were stolen. The available accounts statements from CV Brokerage clearly show that the net balance in Alpha Capital's account with CV Brokerage was \$250,000. The Receiver, who has unlimited access to the account records of both CV Brokerage and ICBC, has not submitted a jot of evidence reflecting that the value in Alpha Capital's CV Brokerage account was anything other than what is reflected in the available documents submitted to the Receiver through Alpha Capital's claim form - \$250,000. The Receiver has unfettered access to all available documents. If there was trading activity, such activity would have diminished the \$250,000 account value and would necessarily be reflected on any account statements of CV Brokerage – which would be in the Receiver's possession. The Receiver has not provided any such evidence, despite requests to do so. This is because the \$250,000 in Alpha Capital's Non-Traded Account could not have been diminished through any trading activity and, if it were, the Receiver would have access to documents reflecting as much. Again, this cannot be the case – based on every available document, \$250,000 remained at CV Brokerage in Alpha Capital's segregated account and \$250,000 was never returned to Alpha Capital.

B. Any Additional Documents Proving or Disproving the Receiver's Contention is in the Possession of the Receiver

The Receiver's Motion argues that the Court should reject Alpha Capital's claim on grounds that the Receiver did not receive "documents that the Receiver believes should exist." (Motion at p. 61). However, Alpha Capital's attempt to obtain relevant records has been foreclosed due to the Receivership Order and the Receiver ought to be in possession of responsive documents it now seeks.

On October 22, 2019, Alpha Capital filed and initiated an arbitration action with the Financial Industry Regulatory Authority ("FINRA") seeking to recoup its \$250,000 deposit, naming CV Brokerage, William McCormack, and ICBC as respondents. Prior to engaging in discovery, the arbitration panel stayed the arbitration proceeding, pursuant to the Court's Receivership Order. (Exhibit 5, Order of the Arbitration Panel). The FINRA proceeding remains stayed. Consequently, Alpha Capital has no means of securing additional documents from CV Brokerage or ICBC. If the FINRA proceeding had not been stayed or remain in such status, Alpha Capital intended/intends to discover the very information and documents that the Receiver is now demanding of Alpha Capital.

In contrast, the Receiver has unfettered access to the books and records of CV Brokerage and ICBC Bank whom presumably have the information and documents the Receiver is seeking and has sought from Alpha Capital. Pursuant to the Receivership Order, the Receiver is granted the power to subpoena relevant parties and to obtain the books and records of the Defendants and related entities:

Smith and the past and/or present officers, directors, agents, managers, general and limited partners, trustees, attorneys, accountants, and employees of the Receivership Parties as well as those acting in their place, including third parties storing financial and other business information and/or email communications, or other assets or documents, are hereby ordered and directed to preserve and turn over to the Receiver

forthwith all paper and electronic information of, and/or relating to, the Receivership Parties and/or all Receivership Assets; such information shall include but not be limited to books, records, documents, accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, details of items deposited, and check registers), client lists, title documents, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, computer files, databases and other data compilations, including but not limited to records relating to any investments or other transfers of money or other assets made by or on behalf of Receivership Parties, including but not limited to all electronically stored records and information, including any information stored by third parties or using cloud-based services, access codes, security codes, passwords, safe deposit keys, combinations, and all other instruments, papers, and electronic data or records of any kind or nature.

(Receivership Order, ¶15).

In its June 2022 response to the Receiver's request for additional information, Alpha Capital represented that there were no records in its possession which reflects that trading activity resulted in Alpha Capital's \$250,000 loss and Alpha Capital requested to seek documents and information in the Receiver's possession to satisfy the Receiver's information Request. (Exhibit 3, p. 3).

Broker-dealer firms, such as CV Brokerage and their clearing firms, in this case ICBC, are required to maintain extensive books and records under SEC and FINRA rules and regulations. For example, CV Brokerage and ICBC are required to maintain customer brokerage statements, trade logs, records of commissions and fees generated through retail customer accounts, and so on. CV Brokerage and ICBC undoubtedly have information pertaining to Alpha Capital's activities which occurred on its brokerage platform.

The Receiver, who is in possession of the financial statements, trade logs, account statements, and related documents of CV Brokerage and ICBC, is the only party who has access to the very information it seeks from Alpha Capital. Alpha Capital has been foreclosed

from accessing any information from CV Brokerage or ICBC following the SEC's action against Defendants. Alpha Capital should not be punished for not having access to the relevant information the Receiver seeks, especially when Alpha Capital is being prevented from accessing the existing relevant information the Receiver is demanding and presumably has. If the Receiver believes that Alpha Capital's \$250,000 was diminished as a result of Alpha Capital's trading activity, the Receiver is in the best position to prove this contention true. The Receiver has not produced any documents whatsoever supporting this contention.

CONCLUSION

For all of the foregoing reasons, Alpha Capital respectfully requests the Court deny the Receiver's Motion and accept the receivership claim of Alpha Capital.

Respectfully submitted,

/s/ Stuart J. Moskovitz

Stuart J. Moskovitz, Esq.

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*An Attorney for Interested Party Alpha
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CERTIFICATE OF SERVICE

Stuart Moskowitz, counsel for Alpha Capital Trading Group, LLC, hereby certifies that on May 3, 2023, he electronically filed the foregoing via the CM/ECF system, thereby serving all registered counsel. Stuart Moskowitz further sent a courtesy copy by UPS Overnight Mail to Hon. Madeline Cox Arleo, U.S.D.J.

/s/ Stuart J. Moskowitz
Stuart J. Moskowitz, Esq.
Attorney for Alpha Capital
Trading Group, LLC

EXHIBIT "1"

EXHIBIT "1"

EXHIBIT "1"

Alpha Capital Trading Group- Funding & Withdraw Activity Detail to CV Brokerage Inc

Funding-- Alpha Capital Trading Group [from third-party affiliate entity] to CV Brokerage Inc- c/o Alpha Capital Trading Group Account:

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock	TD Ameritrade account		Completed
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock		PNC Bank	Completed
10/19/18	-\$4,000,000	OPM Investments LLC	PNC Bank		Completed
10/19/18	+\$4,000,000	CV Brokerage Inc- c/o Alpha Capital Trading Group Account		PNC Bank	Completed

Funding-Withdraw- Alpha Capital Trading Group [to third-party affiliate entity] from CV Brokerage Inc- c/o Alpha Capital Account:

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/27/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
10/27/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
12/31/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
12/31/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
01/23/19	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
01/23/19	+\$1,000,000	Cedar Crest Professional Park LP		Wells Fargo	Completed
07/03/19	-\$750,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
07/03/19	+\$750,000	Limestone Partners, LP		PNC Bank	Completed
07/23/19	-\$250,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		In-Complete
07/23/19	\$250,000	Limestone Partners, LP		PNC Bank	In-Complete

CONFIDENTIAL

ALPHA 000157

EXHIBIT "2"

EXHIBIT "2"

EXHIBIT "2"

From: Jim Bell <jamesrbell123@aol.com>
Sent: Tuesday, July 23, 2019 1:03 PM
To: Madam Chair mc@cvii.uk (Brenda Smith)
Cc: dbr@rothrock.com; dbrmpower@rothrock.com
Subject: ALPHA Capital-Request for Capital Return

Brenda,

We would like to sincerely thank you for all of your efforts to restore trading for both your company as well as our company. However after almost 18 weeks of being placed on a trading hold and prevented from any trading operations through Bristol Advisors LLC, Broad Reach Capital and or CV Brokerage—our investor-partner David Rothrock, Esq. is requiring an immediate full return of his capital until you can provide notice that we may resume trading with your company.

Please realize that our interest remains to continue working with you and your affiliated companies. We would like to reiterate that upon (i) the completion of your scheduled required funding, (ii) the completion of all required approvals of ICBC, (iii) such trading destination(s) as required to support our trading account requirements, and (iv) to resume our trading account operation with the leverage required- we would like to return the capital to the ICBC account through Bristol Advisors LLC, Broad Reach Capital and resume the respective business through CV Brokerage.

Brenda, at this time we ask you to please accept our official request to immediately return **\$250,000** from of our \$250K deposit, but in any case we request no later than **Wednesday July 24th**, 2019 to our authorized and directed account below:

ABA PNC Bank Wire: ██████████0053
Bank Name: PNC Bank N.A.
Bank Address: 201 Penn Avenue
 Scranton, PA 18503
Contact Number: Tel (570) 961 – 6961
Beneficiary Account Name: Limestone Partner LP
Beneficiary Account Number: ██████████4567
Beneficiary Wire Amount: **\$250,000.**

Please contact me for any assistance on this matter.

Sincerely,

Jim Bell

CC: David B. Rothrock

Jim Bell, CEO
Prodigio | Smart Robo Trading Technology
by mPower Trading Systems
Office: (610) 552 - 0099
Mobile: (267) 738 - 7074

EXHIBIT "3"

EXHIBIT "3"

EXHIBIT "3"

CHAPMAN | ALBIN

June 3, 2022

VIA EMAIL

Andrew Gallinaro
Conrad O'Brien
1500 Market Street, Suite 3900
Philadelphia, PA 19102

Subject: Alpha Capital Trading Group, LLC Trade Creditor Claim Form
SEC v. Smith, et al., Civ. No. 2:19-cv-17213-MCA (D.N.J.)

Dear Mr. Gallinaro:

I represent Alpha Capital Trading Group, LLC (“Alpha Capital”). Alpha Capital submitted its Creditor Claim Form on May 5, 2022. I now write in response to your letter dated May 25, 2022, in which the Receiver espouses a theory that “the diminution in value of the account may be a result of Alpha Capital’s trading activity” and the Receiver’s request for additional information.

The Receiver is incorrect for a number of reasons summarized here and further elaborated on below: (1) the results of Alpha Capital’s trading activity was limited to Alpha’s “Net Capital Deposit” (defined below), which was deposited into a segregated account for which any profits and losses incurred as a result of Alpha Capital’s trading were added or subtracted from Alpha’s Net Capital Deposit on a monthly basis; (2) Alpha Capital has provided proof of its deposit of the \$4,000,000 into its retail brokerage account with CV Brokerage, Inc. (“CV Brokerage”), the withdrawal of \$3,750,000 and numerous emails and account statements showing the remaining balance of Alpha Capital’s Net Capital Deposit in the amount of \$250,000, which to date has not been returned; (3) Alpha Capital’s Net Capital Deposit is solely Alpha Capital’s and was never invested with or commingled with any other monies of Broad Reach Capital, LP, the Broad Reach Fund (defined below) or any other fund of CV Brokerage or Brenda Smith; and (4) it is fundamentally unfair to put the burden of proof that “the diminution in value of the account may be a result of Alpha Capital’s trading activity” on Alpha Capital when Alpha Capital has provided proof of its claim and any evidence and documents to the contrary (which we believe does not exist) would be in the hands of the Receiver, if at all. As you know, the Receiver stayed Alpha Capital’s FINRA action against CV Brokerage which prevented Alpha Capital’s ability to perform due diligence and request and receive potentially additional information to support its claim or disprove its claim, as well as the Receiver has denied all access to the accounts and records of CV Brokerage, Broad Reach Capital LP and Brenda Smith such that Alpha Capital has no current means to discover relevant information with regards to the Receiver’s request as set forth in its May 5, 2022 letter.

As background, the SEC’s action stems from the investment advisory fraud of Brenda Smith (“Smith”), owner of Broad Reach Capital, LP and various other entities. Smith also owned CV Brokerage, Inc., (“CV Brokerage”) which subsequent to the SEC action was barred from the securities industry by FINRA. Smith promised investors that their money would be invested in

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sophisticated, highly liquid trading strategies, utilizing equities and options through its fund at Broad Reach Capital LP, (the “Broad Reach Fund”). According to the SEC’s Complaint, the majority of the investor money investments were not put into the Broad Reach Fund but rather funneled into unrelated companies, used to pay back other investors, or utilized for personal use. Investors were provided false performance statements and fabricated documents regarding the Broad Reach Fund assets and investment valuations. Smith also used CV Brokerage as a means to funnel investor money. The Receiver was appointed in June 2020 to pursue and preserve Receivership Assets for the benefit of the Receivership Estate and to make distributions to victims of Smith’s elaborate schemes.

Alpha Capital is one such victim of Smith’s schemes. Alpha Capital was a retail customer of Smith’s brokerage firm, CV Brokerage Inc. Alpha Capital opened its retail brokerage account at CV Brokerage in 2018 and deposited \$4 million dollars (Alpha’s “Net Capital Deposit”) into CV Brokerage’s net capital account, which account had sub-account numbers one of which was uniquely associated with Alpha Capital and its Net Capital Deposit. Alpha Capital’s Net Capital Deposit was represented by CV Brokerage as being placed into a sub-account for Alpha Capital under CV Brokerage’s segregated account with ICBC Bank. As far as Alpha Capital was aware, its Net Capital Deposit was always held in its sub-account under CV Brokerage’s segregated account and never commingled with any other monies, the Broad Reach Fund or any other funds of Broad Reach Capital, LP or CV Brokerage fund. The purpose of the segregated account evidenced by a specific sub-account number for Alpha Capital’s “Net Capital Deposit” funds (the “Account”) was to support Alpha Capital’s brokerage activity, specifically Alpha Capital’s equity and ETF quantitative algorithmic trading brokerage execution and clearing through ICBC.

CV Brokerage provided Alpha Capital documentation, on a monthly basis, showing the running balance of Alpha Capital’s Net Capital Deposit funds remaining in Alpha Capital’s segregated sub-account at CV Brokerage. *See* “**Attachment 1.**” In late 2018 and early 2019, Alpha Capital withdrew \$3.75 million of its original Net Capital Deposit funds it had on deposit at CV Brokerage in its normal course of business. Upon repeated requests by Alpha Capital to CV Brokerage to return the balance of Alpha Capital’s Net Capital Deposit in the amount of \$250,000, after more than a 4 month “trading stoppage” in which Alpha Capital was not allowed to make any trades in its sub-account, neither CV Brokerage nor its officers returned Alpha Capital’s remaining Net Capital Deposit in the amount of \$250,000. Accordingly, Alpha Capital submitted its Creditor Claim Form to the Receiver on May 5, 2022. *See* “**Attachment 2.**”

It is imperative to note that the \$250,000 is the remaining monies from Alpha Capital’s Net Capital Deposit funds of \$4 million dollars which monies were deposited into a segregated retail customer brokerage account at CV Brokerage under a separate sub-account number, and which monies were never invested in Smith’s Broad Reach Fund, fund nor commingled with any other investments, or funds of CV Brokerage, Broad Reach Capital, LP or Smith. These funds were never returned even after multiple demands made by Alpha Capital upon CV Brokerage. Alpha Capital’s account was not diminished in value due to any trading by Alpha Capital or otherwise. In fact, Alpha Capital was informed through multiple emails and phone calls from CV Brokerage representatives as well as Brenda Smith that the brokerage account was placed on a trading hold for over 4 months and no trades were executed. *See* “**Attachment 3.**”

There is no evidence, whatsoever, that the \$250,000 at issue was diminished through any trading activity. Rather, \$250,000 was the amount of funds that were purportedly remaining in the brokerage account, which were stolen. Although there is no evidence of trading activity leading to losses, it is inconsequential, because even if there was trading activity, such activity would have diminished the \$250,000 account value. Again, this cannot be the case – based on every available document, \$250,000 remained at CV Brokerage in Alpha Capital’s segregated sub-account and \$250,000 was never returned to Alpha Capital.

I would also note that the Receivership Order provides the Receiver with unfettered access to books, records, and accounts of the Receivership entities. These are documents which Alpha Capital does not have access to. Indeed, the Receiver notes in his First Quarterly Status Report that he “is aware of the nature and amount of the various alleged claims and counterclaims involved in these arbitrations and intends to further evaluate these claims in connection with creditor claim proceedings.” Undoubtedly, the Receiver has access to records which evidences the fact that trading activity was not the cause of the diminution of value of Alpha Capital’s account.

In contrast, Alpha Capital has been unable to procure any documents relating to its losses, due to the Receivership Order staying all ancillary proceedings, including Alpha Capital’s FINRA arbitration action against CV Brokerage. It is fundamentally unfair to put the burden on Alpha Capital to produce documents and information which it does not have access to. It is the Receiver that is in the best position to make the determination as to whether trading activity is to blame for the “diminution in value of the account.” Again, there is no records in Alpha Capital’s possession which reflects that trading activity is to blame and Alpha Capital attests in no uncertain terms that there has been no diminution in value of its retail sub-account due to Alpha Capital’s trading activities. CV Brokerage’s own records reflect that trading activity had no impact on the value of Alpha Capital’s account. However, if the Receiver has records of such or believes otherwise, I would invite a conversation to discuss this issue, or the opportunity to seek access to relevant documents and information in the Receiver’s possession to demonstrate that Alpha Capital has a valid claim as a creditor of the Receivership Estate.

I hope this answers your questions. If you have any further questions or concerns, please contact me. Thank you.

Sincerely,

/s/Philip L. Vujanov

Philip L. Vujanov

PLV/sg

ATTACHMENT 1

Alpha Capital Trading Group- Funding & Withdraw Activity Detail to CV Brokerage Inc

Funding--- Alpha Capital Trading Group [from third-party affiliate entity] to CV Brokerage Inc- c/o Alpha Capital Trading Group Account:

Deposits

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock	TD Ameritrade account		Completed
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock		PNC Bank	Completed
10/19/18	-\$4,000,000	OPM Investments LLC	PNC Bank		Completed
10/19/18	+\$4,000,000	CV Brokerage Inc- c/o Alpha Capital Trading Group Account		PNC Bank	Completed

Funding-Withdraw- Alpha Capital Trading Group [to third-party affiliate entity] from CV Brokerage Inc- c/o Alpha Capital Account:

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/27/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
10/27/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
12/31/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
12/31/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
01/23/19	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
01/23/19	+\$1,000,000	Cedar Crest Professional Park LP		Wells Fargo	Completed
07/03/19	-\$750,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
07/03/19	+\$750,000	Limestone Partners, LP		PNC Bank	Completed
07/23/19	-\$250,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		In-Complete
07/23/19	\$250,000	Limestone Partners, LP		PNC Bank	In-Complete

ATTACHMENT 2

SEC v. BRENDA SMITH, et al., Civ. No. 2:19-cv-17213 (D.N.J.)

CREDITOR CLAIM FORM

Name of Creditor:

Alpha Capital Trading Group, LLC

Name and Address Where Notices Should be Sent:

David B. Rothrock

Alpha Capital Trading Group, LLC

1645 Kecks Road

Breinigsville, PA 18031

Email Address:

dbrms@rothrock.com

dbr@rothrock.com

Jamesbell123@aol.com

mcoyle@mpowertrading.com

Telephone No.:

David B. Rothrock (484) 357 - 4315

James R. Bell (267) 738 - 7074

Date(s) of Claim:

2018

Amount of Claim:

Approx. \$250,000.00

Please attach copies of all invoices relating to your claim. Do not send original documents.

Copies of the documents provided to the Receiver will not be returned to the creditor. You must maintain the original documents as the Receiver may ultimately request them for verification.

Alpha Capital Trading Group- Funding & Withdraw Activity Detail to CV Brokerage Inc

Funding-- Alpha Capital Trading Group [from third-party affiliate entity] to CV Brokerage Inc- c/o Alpha Capital Trading Group Account:

Deposits

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock	TD Ameritrade account		Completed
10/10/18	\$4,020,000	OPM Investments, LLC c/o David B. Rothrock		PNC Bank	Completed
10/19/18	-\$4,000,000	OPM Investments LLC	PNC Bank		Completed
10/19/18	+\$4,000,000	CV Brokerage Inc- c/o Alpha Capital Trading Group Account		PNC Bank	Completed

Funding-Withdraw- Alpha Capital Trading Group [to third-party affiliate entity] from CV Brokerage Inc- c/o Alpha Capital Account:

<u>Date</u>	<u>Amount</u>	<u>Funding Source/ Recipient Entity Name</u>	<u>From Bank Entity</u>	<u>To Bank Entity</u>	<u>Funding Status</u>
10/27/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
10/27/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
12/31/18	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
12/31/18	+\$1,000,000	Rock Real Estate Family Partners		PNC Bank	Completed
01/23/19	-\$1,000,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
01/23/19	+\$1,000,000	Cedar Crest Professional Park LP		Wells Fargo	Completed
07/03/19	-\$750,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		Completed
07/03/19	+\$750,000	Limestone Partners, LP		PNC Bank	Completed
07/23/19	-\$250,000	CV Brokerage Inc- c/o Alpha Capital Account	CV Brokerage ICBC Bank		In-Complete
07/23/19	\$250,000	Limestone Partners, LP		PNC Bank	In-Complete

ATTACHMENT 3

From: Jim Bell <jamesrbell123@aol.com>
Sent: Tuesday, July 23, 2019 1:03 PM
To: Madam Chair mc@cvii.uk (Brenda Smith)
Cc: dbr@rothrock.com; dbrmpower@rothrock.com
Subject: ALPHA Capital-Request for Capital Return

Brenda,

We would like to sincerely thank you for all of your efforts to restore trading for both your company as well as our company. However after almost 18 weeks of being placed on a trading hold and prevented from any trading operations through Bristol Advisors LLC, Broad Reach Capital and or CV Brokerage—our investor-partner David Rothrock, Esq. is requiring an immediate full return of his capital until you can provide notice that we may resume trading with your company.

Please realize that our interest remains to continue working with you and your affiliated companies. We would like to reiterate that upon (i) the completion of your scheduled required funding, (ii) the completion of all required approvals of ICBC, (iii) such trading destination(s) as required to support our trading account requirements, and (iv) to resume our trading account operation with the leverage required- we would like to return the capital to the ICBC account through Bristol Advisors LLC, Broad Reach Capital and resume the respective business through CV Brokerage.

Brenda, at this time we ask you to please accept our official request to immediately return **\$250,000** from of our \$250K deposit, but in any case we request no later than **Wednesday July 24th**, 2019 to our authorized and directed account below:

ABA PNC Bank Wire: ██████████0053
Bank Name: PNC Bank N.A.
Bank Address: 201 Penn Avenue
Scranton, PA 18503
Contact Number: Tel (570) 961 – 6961
Beneficiary Account Name: Limestone Partner LP
Beneficiary Account Number: ██████████4567
Beneficiary Wire Amount: **\$250,000.**

Please contact me for any assistance on this matter.

Sincerely,

Jim Bell

CC: David B. Rothrock

Jim Bell, CEO
Prodigio | Smart Robo Trading Technology
by mPower Trading Systems
Office: (610) 552 - 0099
Mobile: (267) 738 - 7074

ALPHA 000007

EXHIBIT "4"

EXHIBIT "4"

EXHIBIT "4"

CHAPMAN | ALBIN

July 31, 2022

VIA EMAIL

Andrew Gallinaro
Conrad O'Brien
1500 Market Street, Suite 3900
Philadelphia, PA 19102

Subject: Alpha Capital Trading Group, LLC Trade Creditor Claim Form
SEC v. Smith, et al., Civ. No. 2:19-cv-17213-MCA (D.N.J.)

Dear Mr. Gallinaro:

I am writing to provide supplementation information as to the receivership claim of Alpha Capital Trading Group, LLC (“Alpha Capital”).

As background, Alpha Capital submitted their Creditor Claim Form on May 5, 2022. Following the submission, you wrote a letter dated May 25, 2022, in which the Receiver expressed a that “the diminution in value of the account may be a result of Alpha Capital’s trading activity” and the Receiver’s request for additional information. On June 3, 2022, Alpha Capital sent you a response letter explaining that this was not the case and now supplements its prior response. For the reasons previously expressed and further expounded on below, Alpha Capital has a valid claim as a creditor of the Receivership Estate:

1. Prior to account opening and funding with CV Brokerage Inc., Alpha Capital conducted the necessary due diligence of CV Brokerage through both: (i) FINRA (FINRA Broker Check), (ii) Securities and Exchange Commission, (iii) and in-person meetings with CV Brokerage executives Brenda Smith and William McCormack. Both regulatory agencies as well as company executives confirmed and verified that CV Brokerage Inc. as a validly registered broker-dealer with the Securities and Exchange Commission and a FINRA member firm. CV Brokerage was registered and website represented to provide both retail and institutional customers brokerage services;

2. Alpha Capita Trading, opened and funded a \$4 million brokerage account with CV Brokerage Inc. on October 19, 2018. Alpha’s “Net Capital Deposit” funds were supposed to be placed into Alpha’s CV Brokerage segregated account with ICBC Bank. As far as Alpha Capital is aware, the funds were segregated in a separate account and never comingled with any fund.

3. Alpha Capital received an Account number like any other customer would receive at any other brokerage firm;

4. Alpha Capital made deposits and received withdraws from its account number like any other customer would conduct at any other brokerage firm;

5. Alpha Capital, at-all-times initiated and made ALL trades to its own self-directed account number like any other customer would at any other brokerage firm;

6. Alpha Capital was charged both (i) Commissions and (ii) Brokerage Platform fees to its own self-directed account number like most customers experience at any other brokerage firms;

7. Alpha Capital funds were held at CV Brokerage's clearing firm, Industrial and Commercial Bank of China (ICBC). This is typical of an Introducing broker to have a third-party clearing firm for its brokerage account services like most customers experience at any other brokerage firms;

8. Alpha Capital's brokerage funds were deposited as well as withdrawn from CV Brokerage Inc between January 2019 and July 2019. The Deposit Amount Paid-In was \$4,000,000. The Withdraw Amount Received was \$3,750,000. The non-paid brokerage account balance remains \$250,000. CV Brokerage provided Alpha Capital with documentation showing the amount of purported funds it had remaining at CV Brokerage. See "**Attachment 1.**"

9. The \$250,000 at issue was not invested in Brenda Smith's fund and was not commingled with any other investments. Rather, the \$250,000 was on deposit at a brokerage firm, purportedly sitting in a segregated account. These funds were never returned. Alpha Capital's account was not diminished in value due to any trading by Alpha Capital or otherwise. In fact, Alpha Capital was informed that the account was placed on a trading hold for over 4 months and no trades were executed. See "**Attachment 2.**"

10. If the value of Alpha Capital's account were diminished due to trading, then one would expect that if trading did occur, Alpha would have profits or losses. Alpha Capital's account did not share in any profits due to trading and the same logic applies as to why Alpha Capital does not have losses due to trading, either. The simple, clear fact of the matter is that the \$250,000 was in the brokerage account and it was stolen. Alpha Capital is a victim and suffered losses and, as such, rightly has a claim as a creditor of the Receivership Estate.

11. There remains absolutely no evidence that any of the losses of Alpha Capital are the result of any trading activity. There is not a single account statement of reference to any such event, because the cash in Alpha Capital's account was not used to buy or sell any securities. It is telling that Alpha Capital did not receive any trading profits and, similarly, there were no trading losses. All of the evidence reflects that this was simply cash in Alpha Capital's account.

12. Likewise, the Receiver has not identified and has not produced a single document or piece of evidence which reflects that "the diminution in value of the account may be a result of Alpha Capital's trading activity." Again, this cannot be the case – based on every available document, \$250,000 remained at CV Brokerage in Alpha Capital's segregated account and \$250,000 was never returned to Alpha Capital.

13. There is no records in Alpha Capital's possession which reflects that trading activity is to blame. CV Brokerage's own records reflect that trading activity had no impact on the value of Alpha Capital's account. However, if the Receiver has records of such or believes otherwise, I

would invite a conversation to discuss this issue, or the opportunity to seek access to relevant documents and information in the Receiver's possession to demonstrate that Alpha Capital has a valid claim as a creditor of the Receivership Estate.

I hope this answers your questions. If you have any further questions or concerns, please contact me. Thank you.

Sincerely,

/s/Philip L. Vujanov

Philip L. Vujanov

PLV/sg

ATTACHMENT 1

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Cc: dbr@rothrock.com; dbrmpower@rothrock.com
Subject: ALPHA Capital-Request for Capital Return

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Please realize that our interest remains to continue working with you and your affiliated companies. We would like to reiterate that upon (i) the completion of your scheduled required funding, (ii) the completion of all required approvals of ICBC, (iii) such trading destination(s) as required to support our trading account requirements, and (iv) to resume our trading account operation with the leverage required- we would like to return the capital to the ICBC account through Bristol Advisors LLC, Broad Reach Capital and resume the respective business through CV Brokerage.

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ABA PNC Bank Wire: ██████████0053
Bank Name: PNC Bank N.A.
Bank Address: 201 Penn Avenue
Scranton, PA 18503
Contact Number: Tel (570) 961 – 6961
Beneficiary Account Name: Limestone Partner LP
Beneficiary Account Number: ██████████4567
Beneficiary Wire Amount: **\$250,000.**

Please contact me for any assistance on this matter.

Sincerely,

Jim Bell

CC: David B. Rothrock

Jim Bell, CEO
Prodigio | Smart Robo Trading Technology
by mPower Trading Systems
Office: (610) 552 - 0099
Mobile: (267) 738 - 7074

EXHIBIT "5"

EXHIBIT "5"

EXHIBIT "5"



ORDER

Submitted By: Carol Gold (On behalf of the arbitration panel)
Submitted Date: 07/24/2020 01:17:16 PM EST

Case ID & Parties:

FINRA Dispute Resolution Services
ORDER

Case Number: 19-03157

In the Matter of the Arbitration Between

Claimant(s)

VS

Respondent(s)

Alpha Capital Trading Group, LLC

CV Brokerage, Inc

William T McCormack

Industrial And Commercial Bank Of China

Brenda A Smith

PREHEARING CONFERENCE

1. Was a prehearing telephonic conference held in the above captioned matter?

Yes

No

ISSUES ADDRESSED

2. Issues addressed: (i.e., name of motion or request, by which party)

The following pleadings have been addressed:

Respondent's motion to stay this matter pursuant to the Order appointing receiver in Securities and Exchange Commission v. Brenda Smith, et al., case number 2:19-cv-17213 (MCA) pending in the District of New Jersey.

Claimant's response to Respondent's motion requesting the Panel order a temporary stay

until August 10, 2020. Further requesting, if the Receiver does not provide an exception

for this arbitration as to Respondents McCormack, CV Brokerage, and/or Brenda Smith, it be

afforded the opportunity to brief the issue of whether this arbitration can still proceed against

Respondent ICBC, only, since Claimant's claims against ICBC are not subject to the Order.

ORDER DECIDED BY

3. Decided by:

- Chairperson
- Panel

RULINGS

4. Rulings:

- After considering the pleadings submitted by the parties (and oral arguments, if prehearing conference held), the Panel/Chairperson rules as follows:

Respondent's motion to stay this matter pursuant to the Order appointing receiver in Securities and Exchange Commission v. Brenda Smith, et al., case number 2:19-cv-17213 (MCA) pending in the District of New Jersey, is granted. This arbitration is stayed until the stay is lifted, the receivership order is terminated, or the parties are successful in seeking leave of the Court to order this arbitration to proceed.

Claimant's request that if the Receiver does not provide an exception for this arbitration as to Respondents McCormack, CV Brokerage, and/or Brenda Smith, it be afforded the opportunity to brief the issue of whether this arbitration can still proceed against Respondent ICBC, only, since Claimant's claims against ICBC are not subject to the Order, is premature. This will not be determined prospectively. This will be addressed if the Receiver does not provide an exception for this arbitration as to Respondents McCormack, CV Brokerage, and/or Brenda Smith.

5. Order compliance date:

- The parties should comply with this order by _____
- Not applicable

ASSESSMENT OF FEES

6. Cost of prehearing conference:

- If the parties settle this matter with no further hearings, the forum fees for this prehearing conference (or discovery-related motion decided without a prehearing conference) are assessed as follows:

50% to Claimant(s), jointly and severally

50% to Respondent(s), jointly and severally

_____ % assessed to _____

_____ % assessed to _____

_____ % assessed to _____

_____ % assessed to _____

- Not applicable

ATTACHMENTS

There are no attached documents.

I further certify, this 13th day of July, 2023, that I caused to be served a true and correct copy of the foregoing upon the following:

**Alpha Capital Trading Group
(By Electronic Filing Pursuant to Fed R. Civ. P. 5 (b) and Electronic Mail)**

c/o Philip L. Vujanov
Chapman Albin
700 West St. Clair Ave.
Hoyt Block, Suite 200
Cleveland, OH 44113
pvujanov@chapmanlegal.com

c/o Stuart J. Moskovitz, Esq.
4400 Route 9 South – Suite 1000
Freehold, NJ 07728
stuartj@moskovitz.org

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