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August 3, 2023

Hon. Madeline Cox Arleo, U.S.D.J
United States District Court - New Jersey
50 Walnut Street
Newark, NJ 07101

Re: **Securities and Exchange Commission v. Smith, et al**
Docket No. 2:19-cv-17213 (MCA)
Objection of Alpha Capital Trading Group, LLC

Dear Judge Arleo:

I represent Alpha Capital Trading Group, LLC ("Alpha") who has filed an objection to the motion by the Receiver for an Order Resolving Disputed Non-Investor Creditor Claims. That order seeks to preclude Alpha from recovering its funds that are not, and never were the possession of Defendants.

After the Court noted that there would be no oral argument for this motion, we received the reply of the Receiver to our objections. In reviewing the reply by the Receiver, we have noted numerous significant and substantial errors of fact in what has been presented to you in the reply which would go unchallenged absent oral argument.

In addition, the Receiver has raised new issues that did not appear in his original motion and by stating them for the first time in his reply leaves Alpha without the opportunity to counter the issues without oral argument. This includes new exhibits that the Receiver attaches to his Response. We also request oral argument as needed to further address the issue of documentation, specifically the Receiver's position that it does not have records that support Alpha's position and the very critical fact that the Receiver is responsible for

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foreclosing Alpha from accessing the very documents that the Receiver claims that Alpha is withholding from this Court.

Alpha agrees with the statement by Receiver that this is a “straightforward issue” for the Court to decide, but it is only straightforward if the Court has the accurate facts before it. It is undisputed that Alpha deposited \$4 million into Defendant Brenda Smith’s broker-dealer firm, CV Brokerage. It is undisputed that \$250,000, which belonged to Alpha Capital, was never returned. The only two questions for the Court to decide is (1) whether the \$250,000 was not returned to Alpha because CV Brokerage actually misappropriated it, or other activity as charged which it should not have done and (2) whether the \$250,000 was in the possession of CV Brokerage as its own funds to utilize in some manner, or whether the funds were always owned by Alpha, passing through CV Brokerage merely as custodians, much like a bank would hold funds for a client.

As background, this action involves the alleged fraud of Defendant Brenda Smith and her purported investment fund, Broad Reach Capital, LP. Among the entities Brenda Smith controlled was a broker-dealer firm, CV Brokerage, Inc. (“CV Brokerage”) (ECF 1, “SEC Complaint” ¶12). According to the SEC’s Complaint, Brenda Smith used her various entities, including CV Brokerage for her activities. In addition to the fraudulent Broad Reach Capital LP investment fund, the SEC alleges that investors who had money on deposit with CV Brokerage also lost their funds and, as such, are creditors in this action. Alpha is one such creditor and a victim of this scheme.

Alpha is an entity that trades securities. Like any market participant, Alpha is required to affiliate with a broker-dealer firm to access the financial markets. Alpha opened a retail trading account with CV Brokerage and became an account holder of the broker-dealer firm.

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CV Brokerage agreed to provide Alpha 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's brokerage activities. It was Alpha's understanding that the funds would pass through CV Brokerage simply as a custodian for Alpha in a segregated account held with The Industrial and Commercial Bank of China Financial Services LLC ("ICBC"), the FINRA-member clearing broker utilized by CV Brokerage. Alpha's funds were always maintained in a broker-dealer account with CV Brokerage, separate and apart from any other fund or investment.

Alpha never took any action to become part of the Broad Reach funds, action that would have been required to make the Receiver's argument valid. Alpha never signed any fund documents; there is no correspondence indicating in any way Alpha's participation in the fraudulent fund. Alpha never received any distributions from the fund or statements from the fund, all of which would have occurred if Alpha were part of the fund. Moreover, Alpha had a direct connection to ICBC for trades so that Alpha could execute trades utilizing its own capital. Brokerage records which the Receiver has exclusive access to and could have provided to the Court would show that. In short, Alpha's funds were never part of the "Fraudulent Fund" and never intended to be, and neither Broad Reach nor CV Brokerage had any authority to execute any trades with Alpha's funds or on behalf of Alpha.

On or about October 19, 2018, Alpha deposited \$4 million with CV Brokerage in its Capital Deposit Account, custodied with ICBC. Alpha was able to access brokerage account statements during this time, electronically. 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. (ECF 257, Exhibit 1, Alpha Capital Funding & Withdrawal Activity Detail).

In mid-2019, CV Brokerage advised Alpha that there would be a

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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 was unable to trade securities with CV Brokerage. Based on all records available to Alpha, the \$250,000 in Alpha Capital's account did not change in value whatsoever. It remained at \$250,000 at all times. As a result of the inability to trade, on July 23, 2019, Alpha'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. Alpha then submitted a Creditor Claim Form to the Receiver on May 5, 2022, seeking to recoup the \$250,000 it had lost. (ECF 257, Exhibit 2, Creditor Claim Form).

The Receiver's motion argues that Alpha's \$250,000 was "diminished in value" through its own trading activities. (ECF 258). This argument is based on speculation and conjecture rather than on fact. There are simply no documents supporting the Receiver's position and, as shown below, any documents to prove or disprove the Receiver's contention is in the exclusive possession, custody and control of the Receiver.

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

The funds Alpha deposited at CV Brokerage were in a segregated account and were not used as capital to place trades. If the Receiver's argument had merit, there would have been fluctuation in the account, 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

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gains and no losses, and logically, no trading.

The limited documents in Alpha's possession confirm that the \$4 million deposit was held in a segregated account at ICBC Bank and was never commingled 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.

Documents show that Alpha 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 was unable to trade and, accordingly, the \$250,000 in its account was not diminished as a result of any trading activity.

The Receiver's response brief contends that Alpha "has not disclosed or provided evidence of any of its trading activity as part of its claim" and thus "Alpha Capital has failed to demonstrate that trading losses did not occur." (ECF 258 at p. 43). This is one of the statements that are factually inaccurate that require oral argument for response. As shown below, Alpha provided the Receiver with the relevant records in Alpha's possession and requested that it be able to access records in the Receiver's exclusive possession, custody and control to further demonstrate the viability of its creditor claim.

On May 5, 2022, the Receiver sent a letter to Alpha in which the Receiver requested information from Alpha regarding the possibility 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." Alpha responded on June 3, 2022, and explained that the Receiver was mistaken. (Exhibit 1). In doing so, Alpha provided the Receiver with an account of the deposits and withdrawals to and from Alpha's CV Brokerage account. Alpha also provided the Receiver with an email from Alpha's members to Brenda Smith, reflecting that an 18-week trading hold prevented Alpha from making any trades in

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its account and requesting its remaining \$250,000 deposit at CV Brokerage be returned. Alpha's letter stated that "there is no records in Alpha Capital's possession which reflects that trading activity is to blame and Alpha attests in no uncertain terms that there has been no diminution in value of its retail sub-account due to Alpha's trading activities" and requested that the Receiver grant Alpha "the opportunity to seek access to relevant documents and information in the Receiver's possession to demonstrate that Alpha has a valid claim as a creditor of the Receivership Estate." (Exhibit 1) . Despite Alpha's request, the Receiver has never granted Alpha the opportunity to seek relevant documents to further demonstrate its claim within documents held in the Receiver's exclusive possession, custody and control.

On July 31, 2022, Alpha submitted another letter to the Receiver, further explaining its position and, again, attaching the same relevant documents supporting its position. Alpha indicated in its letter that (1) the \$250,000 on deposit at CV Brokerage could not have been diminished through trading activity because there was a trading hold for over 4 months and no trades were able to be executed, and (2) Alpha provided a document which reflects deposits and withdrawals from the account and, no profits or losses occurred whatsoever during this time, because no trading was being done. Alpha ended its letter by once again stating that "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." (Exhibit 2, enumerated paragraph 13). Once again, despite Alpha's request, the Receiver has never granted Alpha Capital the opportunity to seek relevant documents to further demonstrate its claim within documents held in the Receiver's exclusive possession, custody and control.

The Receiver not only denied Alpha access to records to further

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support its claim, but in its response brief, the Receiver argues that “[t]he Receiver has no access to records from which he could confirm Alpha Capital’s performance.” (ECF No. 258 at p. 43). The Receiver’s position, that it does not have access to relevant records which would prove or disprove its hunch, is implausible and patently erroneous.

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

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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). Accordingly, when the Receiver informed this court that “Alpha Capital could have provided, but did not, bank records” to support its claim, or “proof that its trading activity was conducted in a separate account with other funds,” it is of no fault or lack of effort on Alpha’s behalf. (ECF No. 258 pg. 41). In oral argument, we would explain the above and challenge the cynical representation to the Court that it is Alpha, rather than the Receiver that is withholding documents.

Accordingly, the Receiver’s claims in the Receiver’s Response, sent to this Court knowing we would not have the opportunity to respond without oral argument are inaccurate or misleading:

- “[Alpha Capital did not produce] known, demonstrable losses supported by bona fide bank record” (ECF 258 p. 41): Alpha did provide an accounting to the Receiver (twice) with an internal accounting of all deposits and withdrawals. Any further documents reflecting deposits and withdrawals are undoubtedly in the possession of the Receiver, as these money movements would be reflected in records of CV Brokerge and/or ICBC. Further, the issue of whether Alpha actually deposited \$4 million with CV Brokerage and had \$250,000 unreturned is undisputed and not an issue raised by either party in this action;
- “Alpha Capital could have provided, but did not, proof of its trading activity conducted in a

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separate account with other funds” (ECF 258 p. 41): As noted throughout, Alpha does not have access to any brokerage statements at CV Brokerage which reflect trading. At one time, before the SEC action, Alpha was able to access these records electronically, but has not been able to do so since 2019. Further, no trading activity for the 4 months prior to the SEC’s action would exist, as there was a trading hold on Alpha’s account which restricted its ability to make any trades at all. The Receiver undoubtedly has access to these records;

- “Alpha Capital could have provided, but did not, documentation to establish the connection between it and the unknown entities who both deposited and received the funds transferred that Alpha Capital claims belongs to it” (ECF 258 p. 41): this argument by the Receiver is a “red herring.” The only party with a creditor claim in this proceeding is Alpha. It is undisputed that Alpha had an account relationship with CV Brokerage. The \$250,000 at issue was in the account and belonged to Alpha. The Receiver’s attempt to obscure the clear issue at hand is not helpful or persuasive.

All documents available to Alpha, limited by the Receiver as they are, and presented to the Court reflect the opposite view of the Receiver’s position.

For the reasons demonstrated above, Alpha respectfully requests that the Court grant its request for oral arguments on the Receiver’s Motion for Order Resolving Disputed Non-Investor Creditor Claims, or, at the least, reject the Receiver’s motion with respect to Alpha

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requiring the Receiver to produce the underlying documents
necessary to establishing the facts with respect to Alpha's objection.

Respectfully submitted,



Stuart J. Moskowitz

SJM/slf7285

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

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:

dbrrms@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: 031000053
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: 90-1537-4567
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

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

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

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: 031000053
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: 90-1537-4567
Beneficiary Wire Amount: **\$250,000.**

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