

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 15-80446-CIV-COHN/SELTZER

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ECAREER HOLDINGS, INC.;
ECAREER, INC.; JOSEPH J. AZZATA;
DEAN A. ESPOSITO; JOSEPH DEVITO, and
FREDERICK J. BIRKS,

Defendants,

VIPER ASSET MANAGEMENT, LLC;
ESPO CONSULTING, LLC;
DJC CONSULTING, LLC;
J & D MARKETING, LLC;
GRYPHON ASSET MANAGEMENT, LLC, and
CARLA AZZATA,

Relief Defendants.

RECEIVER'S UNOPPOSED MOTION TO EMPLOY SPECIAL COUNSEL

Receiver David M. Levine, not individually, but solely in his capacity as the court-appointed receiver ("Receiver") for Defendants eCareer Holdings, Inc. and eCareer, Inc. (the "Corporate Defendants"), files this Unopposed Motion to Employ Special Counsel, pursuant to the Court's May 22, 2015 Order Granting Plaintiff's Motion for Appointment of Receiver (the "Receivership Order") [ECF No. 72].

On April 7, 2015, the Securities and Exchange Commission (the "Commission") commenced the above-styled action against the Corporate Defendants, their principal, Defendant

Joseph J. Azzata (“Azzata”), and others for making material misrepresentations to investors in violation of various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. *See* Compl., ECF No. 1. In the Complaint, the Commission alleges that the investors were told that their funds would be used as working capital to expand the Corporate Defendants’ business, but, in reality, significant portions of the funds raised from the Corporate Defendants’ investors were funneled to or for the benefit of Azzata and his wife, Relief Defendant Carla Azzata. *See, e.g., id.* ¶¶ 3, 4 & 7.

On May 22, 2015, the Court appointed the Receiver as receiver for the Corporate Defendants. *See* Receivership Order. Pursuant to the Receivership Order, the Receiver is authorized and directed to “[i]nvestigate the manner in which the affairs of the Corporate Defendants were conducted,” institute and litigate legal actions, including for the avoidance of fraudulent transfers under Fla. Stat. § 726.101, *et seq.*, for the benefit of the Corporate Defendants’ investors and other creditors, and compromise or settle those actions. *See id.*, at 2–3 ¶ 2; 4 ¶ 6. Additionally, to assist the Receiver in carrying out his duties under the Receivership Order, the Receiver is authorized to employ legal counsel and to fix the rates for their reasonable compensation. *See id.*, at 3, ¶ 4. On June 12, 2015, the Court granted the Receiver’s motion to employ the law firm of Levine Kellogg Lehman Schneider + Grossman, LLP (“LKLSG”) to assist him in carrying out his duties as Receiver as set forth in the Receivership Order, effective as of May 22, 2015. [ECF No. 82 & 84].

Subsequent to the date of the Receiver’s appointment, the Receiver reviewed documents that indicate that payments were made by the Corporate Defendants to American Express on various American Express credit cards issued to the Corporate Defendants and their insiders. LKLSG, however, represents American Express in other, unrelated matters. The Receiver, in an

abundance of caution, therefore seeks to employ Patrick J. Rengstl, Esq. of the law firm Payton & Associates as Special Counsel. As Special Counsel, Mr. Rengstl's role will be limited to assisting the Receiver in connection with any potential claims against American Express. Mr. Rengstl, who has significant experience representing court-appointed receivers, has agreed to cap his billing at \$300.00 per hour. A copy of Mr. Rengstl's firm biography is attached as **Exhibit A**. In accordance with the Receivership Order, the Receiver will seek the Court's approval and provide an accounting prior to compensating Special Counsel.

WHEREFORE, for the foregoing reasons, the Receiver requests that the Court grant his Motion to Employ Special Counsel. The Receiver has conferred with Christopher Martin, counsel for the SEC, and he has advised that the SEC has no objection to the relief requested herein. A proposed order is submitted herewith as **Exhibit B**.

Respectfully submitted,

**LEVINE KELLOGG LEHMAN
SCHNEIDER + GROSSMAN LLP**
Counsel for the Receiver
Miami Center, 22nd Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Phone: (305) 403-8788
Fax: (305) 403-8789

By: /s/Stephanie Hauser
Stephanie Hauser, Esq.
Fla. Bar No. 92765
slh@lklsg.com

CERTIFICATE OF SERVICE

I hereby certify that, on July 14, 2015, a true and correct copy of the foregoing has been served upon all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF and to all *pro se* parties identified on the attached Service List via U.S. mail.

/s/Stephanie Hauser
Stephanie Hauser, Esq.

SERVICE LIST

<p>Arthur C. Koski Arthur C Koski P.A. Counsel for DJC Consulting, LLC, Espo Consulting, LLC, J & D Marketing, LLC, Viper Asset Management, LLC, Dean A. Esposito, and Joseph Devito 101 N Federal Highway Suite 602 Boca Raton, FL 33432 561-362-9800 362-9870 (fax) akoski@koskilaw.com</p>	<p>Christopher E. Martin Securities & Exchange Commission 801 Brickell Avenue Suite 1800 Miami, FL 33131 305-982-6386 536-4154 (fax) martinc@sec.gov</p>
<p>Mark C. Perry Counsel for Joseph J. Azzata 2400 East Commercial Blvd Suite 201 Fort Lauderdale, FL 33308 954-351-2601 954-351-2605 (fax) markperryesq@yahoo.com</p>	<p>James D. Sallah Sallah Astarita & Cox, LLC Counsel for Carla Azzata One Boca Place 2255 Glades Road Suite 300E Boca Raton, FL 33431 561 989-9080 561-989-9020 (fax) jds@sallahlaw.com</p>
<p>Frederick J. Birks Defendant 3685 Cassia Drive Orlando, FL 32828</p>	<p>Gryphon Asset Management, LLC Defendant Attention: Frederick J. Birks 3685 Cassia Drive Orlando, FL 32828</p>



Patrick J. Rengstl is senior counsel at Payton & Associates. He is a commercial litigator, a trial lawyer, and an appellate advocate. Patrick's practice includes commercial litigation, federal and state Court receiverships, insurance-related and foreclosure litigation, real estate litigation, and appellate advocacy. Patrick has extensive federal receivership experience in some of South Florida's most notorious alleged Ponzi scheme and investment-related fraud cases filed by the United States Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). In addition, Patrick has extensive federal receivership experience in cases filed by the Federal Trade Commission ("FTC") involving alleged deceptive telemarketing schemes. Before joining Harry Payton at the firm, Patrick was an attorney at Tew Cardenas LLP for approximately seven years and then at spin-off Levine Kellogg Lehman Schneider + Grossman LLP for approximately five years, four years of which he was partner.

Significant Receivership Representations:

- Trade-LLC - Lead counsel to the SEC and CFTC receiver of Trade-LLC and its related entities in the United States District Court for the Southern District of Florida. The action involved an alleged \$28-million Ponzi scheme.
- OM Global - Lead counsel to the corporate monitor of OM Global Investment Fund LLC and OM Global LP in Miami-Dade Circuit Court. The action involved an alleged \$20-million Ponzi scheme and a related SEC case.
- Pension Fund of America, LC - Counsel to the SEC receiver of Pension Fund of America, LC in the United States District Court for the Southern District of Florida. The action involved an alleged fraudulent multi-million dollar investment scheme.
- American Precious Metals, LLC - Counsel to the FTC receiver of American Precious Metals, LLC in the United States District Court for the Southern District of Florida. The action involved an alleged \$37-million precious metals boiler room.
- Timeshare Mega Media and Marketing Group, Inc. - Counsel to the FTC receiver of Timeshare Mega Media and Marketing Group, Inc. in the United States District Court for the Southern District of Florida. The action involved an alleged timeshare boiler room.
- The Dolce Group Worldwide, LLC - Counsel to the FTC receiver of The Dolce Group Worldwide, LLC in the United States District Court for the Southern District of Florida. The action involved an alleged \$4-million extended service contract boiler room.
- Nationwide Connections, Inc. - Counsel to the FTC receiver of Nationwide Connections, Inc. in the United States District Court for the Southern District of Florida. The action involved an alleged boiler room.
- Besides his Federal Court receivership work, Patrick has extensive receivership experience in State Court matters involving alleged fraud and waste to commercial buildings, residential properties, ongoing businesses and family estates.

Insurance-Related Litigation

Patrick has litigated numerous cases involving various title-related and foreclosure claims on behalf of title insurance companies, lenders, and property owners. He has represented title insurance companies in coverage cases, as well as defalcation cases where title agents misappropriate closing funds. Patrick has represented insureds and insurance companies in various litigation matters in the aviation and oil-gas industries.

Bar and Court Admissions

- Florida
- United States District Court for the Southern District of Florida
- United States District Court for the Middle District of Florida
- United States District Court for the Northern District of Florida
- Eleventh Circuit

Articles

Patrick has authored and co-authored several articles in the Daily Business Review, Law360, and Corporate Counsel, such as:

- "A To-Do List for Day 1 of Federal Court Receivership"; Law360; March 10, 2014.
- "Corporate Monitors Keep Status Quo"; Daily Business Review; June 20, 2014.
- "What Exactly Is a Corporate Monitor?" Corporate Counsel; July 18, 2014.
- "5 Reasons Large Companies Are Turning to Boutique Firms"; Law360; August 29, 2014.

Education

Florida State University College of Law, Tallahassee, Florida

- J.D., *cum laude* - 2002
- Honors: Meritorious Service Award
- Honors: Recipient of Book Awards in Legal Writing & Research
- Honors: Recipient of Book Awards in Energy Deregulation
- Law Review: Florida State University Law Review, Associate Editor and Writing & Research Editor
- Moot Court Team: Member

University of Miami, Coral Gables, Florida

- B.S., Psychology, *cum laude* - 1998
- Honors: Phi Beta Kappa Scholarship and Service Award

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GRYPHON ASSET MANAGEMENT, LLC, and
CARLA AZZATA,

Relief Defendants.

ORDER GRANTING RECEIVER'S MOTION TO EMPLOY SPECIAL COUNSEL

THIS MATTER is before the Court on the Receiver's Motion to Employ Special Counsel, filed July 14, 2015 [ECF No. ____].

The Court, having reviewed the Motion and being fully advised in the premises, hereby **ORDERS and ADJUDGES** that the Receiver's Motion to Employ Special Counsel is **GRANTED**.

DONE and ORDERED in Chambers in Ft. Lauderdale, Florida, this ____ day of July, 2015.

JAMES I. COHN
District Court Judge
Southern District of Florida

cc: *Counsel of record & Pro Se Parties*

EXHIBIT B