

**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.

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**RECEIVER'S UNOPPOSED MOTION FOR MODIFICATION TO PROCEDURE FOR  
SALE OF ASSETS HELD BY DEFENDANT FREDERICK J. BIRKS AND RELIEF  
DEFENDANT GRYPHON ASSET MANAGEMENT, LLC**

Receiver David M. Levine, not individually, but solely in his capacity as the court-appointed receiver (the "Receiver") for Defendants eCareer Holdings, Inc. and eCareer, Inc., hereby moves for a modification to the sale procedure set forth in the Court's Order Granting Plaintiff Securities and Exchange Commission's Motion for a Final Judgment of Permanent Injunction and Other Relief Against Defendants Frederick J. Birks and Relief Defendants Gryphon Asset Management, LLC, entered on March 2, 2016 (the "Order"). [D.E. 132].

The Order requires, *inter alia*, that the Receiver sell certain assets held by Defendant Frederick J. Birks (“Birks”) and Relief Defendant Gryphon Asset Management, LLC (“Gryphon”). Specifically, the Receiver is required to liquidate Gryphon’s account at OptionsHouse (acct. # xxxxx1031) (the “OptionsHouse Account”), and to also sell certain share certificates of Continental Rail Corp. and Train Travel Holdings Inc. (the “Share Certificates”). In light of the Receiver’s post-Order investigation, the Receiver seeks to modify the procedure related to the sale of those assets as discussed in detail below.

### **The OptionsHouse Account**

Pursuant to the Order, within 30 days (by April 1, 2016), the Receiver “shall in a reasonable and prudent fashion sell all securities and close out all existing positions or margin loans in Gryphon Asset Management’s account held at OptionsHouse (acct. # xxxxx1031), and distribute the proceeds of the OptionsHouse account as follows: (1) Defendant Birks or Relief Defendant Gryphon Asset Management shall receive \$10,000 from the proceeds of OptionsHouse (acct. # xxxxx1031); and (2) all remaining funds in OptionsHouse (acct. # xxxxx1031) will be paid in partial satisfaction of the Final Judgment and held by the Receiver in a segregated account until further Order of this Court.” [D.E. 132 at 6].

After the Order was entered, Birks informed the Receiver’s counsel that Birks had *already* withdrawn \$10,000 from the OptionsHouse Account *before* the Order was entered, pursuant to his agreement with the Securities and Exchange Commission (the “Commission”). After advising the Commission’s counsel of same, the Commission’s counsel informed the Receiver’s counsel that neither Birks nor Gryphon are therefore entitled to any additional proceeds from the liquidation of the OptionsHouse Account. Thus, the Receiver seeks to modify the procedure for distributing the sale proceeds from the liquidation of the OptionsHouse

Account by eliminating the requirement that the Receiver distribute any sale proceeds to either Birks or Gryphon because they are no longer entitled to same.

In addition, based upon his counsel's communications with OptionsHouse's compliance department, the Receiver seeks this Court's approval of the following methodology for liquidating the OptionsHouse Account and to confirm that such methodology is acceptable under 28 U.S.C. §§ 2001 and 2004:<sup>1</sup>

1. Receiver will furnish OptionsHouse's compliance department with the appropriate Orders from this case and any other information required for OptionsHouse to liquidate the OptionsHouse Account.

2. Upon receipt of such documentation, OptionsHouse will in a reasonable and prudent fashion liquidate the OptionsHouse Account.

3. OptionsHouse will issue a check to the Receiver in the amount of the sale proceeds generated from the liquidation of the OptionsHouse Account, less OptionsHouse's standard transaction fee(s) (the "OptionsHouse Check").

4. Upon receipt of the OptionsHouse Check, the Receiver will deposit same into a segregated account to be held until further Order of this Court.

### **The Share Certificates**

The Order also requires the Receiver to sell "55,000 shares of Continental Rail Corp. (ticker symbol CRCX) and 30,000 shares of Train Travel Holdings Inc. (ticker symbol TTXX)."

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<sup>1</sup> Pursuant to 28 U.S.C. § 2004, "[a]ny personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise." 28 U.S.C. § 2004. Section 2001, which governs the sale of realty, contains a detailed set of sale requirements, including notice and appraisal requirements. *See* 28 U.S.C. § 2001. Based on the Order, it appears the Court may have already modified and/or waived the sale requirements of section 2001 but, in an abundance of caution, the Receiver seeks this Court's approval of the sale methodology proposed herein. [*See* D.E. 132].

[D.E. 132 at 7]. The Receiver received the Share Certificates from Birks, through the Commission's counsel. The Receiver subsequently requested additional documentation from Birks related to Gryphon's initial acquisition of the Share Certificates (*i.e.*, share-origin documentation), but Birks advised that no such share-origin documentation exists.

Since obtaining possession of the Share Certificates, the Receiver has in a reasonable and prudent fashion attempted to sell the Share Certificates through multiple brokers, including the large-discount brokers, eTrade and TD Ameritrade. The Receiver has not been able to locate a broker that is willing to sell the Share Certificates due to regulatory concerns related to the sale of over-the-counter securities, particularly given the lack of any sale-origin documentation for the Share Certificates as stated above. Accordingly, it currently appears that the Share Certificates are non-saleable and worthless for disgorgement and restitution purposes. Nonetheless, the Receiver requests that the Court permit him to continue holding the Share Certificates in the event he is ultimately able to locate a broker that is willing sell the Share Certificates. If the Receiver is not able to locate any such broker, he will file a motion to inform the Court of same and seek the Court's approval to abandon the Share Certificates.

**WHEREFORE**, for the foregoing reasons, the Receiver requests that the Court (i) relieve the Receiver of the requirement to pay Birks or Gryphon the first \$10,000 from the sale proceeds from the liquidation of the OptionsHouse Account, (ii) approve the Receiver's proposed methodology for liquidating the OptionsHouse Account, and (iii) approve the Receiver's request to continue holding the Share Certificates in the event the Receiver is able to locate a broker to sell the Share Certificates. The Receiver has conferred with Christopher Martin, counsel for the Commission, and he has advised that the Commission has no objection to the relief requested herein. A proposed order is submitted herewith as Exhibit A.

Respectfully submitted,

**LEVINE KELLOGG LEHMAN  
SCHNEIDER + GROSSMAN LLP**  
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By: /s/ Matthew J. McGuane  
MATTHEW J. MCGUANE  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 29, 2016, 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.

By: /s/ Matthew J. McGuane  
MATTHEW J. MCGUANE

**SERVICE LIST**

<p><b>Arthur C. Koski</b>                  Arthur C Koski P.A.                  Counsel for DJC Consulting, LLC, Espo Consulting, LLC, J &amp; 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)  <a href="mailto:akoski@koskilaw.com">akoski@koskilaw.com</a></p>	<p><b>Christopher E. Martin</b>                  Securities &amp; Exchange Commission                  801 Brickell Avenue                  Suite 1800                  Miami, FL 33131                  305-982-6386                  536-4154 (fax)  <a href="mailto:martinc@sec.gov">martinc@sec.gov</a></p>
<p><b>Mark C. Perry</b>                  Counsel for Joseph J. Azzata                  2400 East Commercial Blvd Suite 201                  Fort Lauderdale, FL 33308                  954-351-2601                  954-351-2605 (fax)  <a href="mailto:markperryesq@yahoo.com">markperryesq@yahoo.com</a></p>	<p><b>James D. Sallah</b>                  Sallah Astarita &amp; 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)  <a href="mailto:jds@sallahlaw.com">jds@sallahlaw.com</a></p>
<p><b>Frederick J. Birks</b>                  Defendant                  3685 Cassia Drive                  Orlando, FL 32828  <a href="mailto:fredbirks1@gmail.com">fredbirks1@gmail.com</a></p>	<p><b>Gryphon Asset Management, LLC</b>                  Defendant                  Attention: Frederick J. Birks                  3685 Cassia Drive                  Orlando, FL 32828  <a href="mailto:fredbirks1@gmail.com">fredbirks1@gmail.com</a></p>

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**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION FOR MODIFICATION TO  
PROCEDURE FOR SALE OF ASSETS HELD BY DEFENDANT FREDERICK J. BIRKS  
AND RELIEF DEFENDANT GRYPHON ASSET MANAGEMENT, LLC**

**THIS CAUSE** is before the Court on the Receiver's Unopposed Motion for Modification to Procedure for Sale of Assets Held by Defendant Frederick J. Birks ("Birks") and Relief Defendant Gryphon Asset Management, LLC ("Gryphon") [D.E. \_\_\_\_] (the "Motion"). The Court has reviewed the Motion and the record in this case, and is otherwise advised in the premises. It is accordingly

**ORDERED AND ADJUDGED** that:

1. The Motion is **GRANTED**.

2. The Receiver is relieved from the Court's previous Order to pay Birks or Gryphon \$10,000 of the sale proceeds generated from the liquidation of the OptionsHouse Account (acct. # xxxxx1031) because they are no longer entitled to those proceeds. [See D.E. 132].

3. OptionsHouse shall liquidate the OptionsHouse Account (acct. # xxxxx1031) and issue a check to the Receiver in the resulting amount of the sale proceeds, less OptionsHouse's standard transaction fee(s). OptionsHouse shall deliver this check to the attention of the Receiver's counsel at the following address: Attn. Matthew J. McGuane, Esq., Levine Kellogg Lehman Schneider + Grossman LLP, 201. South Biscayne Blvd., 22<sup>nd</sup> Floor, Miami, Florida 33131.

4. The Receiver shall deposit the above-referenced check from OptionsHouse into a segregated account to be held until further Order of this Court.

5. The Receiver shall continue to hold the 55,000 shares of Continental Rail Corp. (ticker symbol CRCX) and 30,000 shares of Train Travel Holdings Inc. (ticker symbol TTXX) in the event the Receiver is able to locate a broker that is willing to sell these shares. If the Receiver is not able to locate any such broker, the Receiver shall file an appropriate motion to inform the Court of same.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida,  
this \_\_\_ day of March 2016.

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**JAMES I. COHN**  
United States District Judge

Copies provided to: *Counsel of Record & Pro Se Parties*