

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:15-cv-80446-JIC-COHN

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
v.)
)
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)
_____)

[Proposed] ORDER GRANTING PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR A JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST DEFENDANT JOSEPH J. AZZATA

This cause comes before the Court upon the Motion by Plaintiff Securities and Exchange Commission for a Judgment of Permanent Injunction and Other Relief against Defendant Joseph J. Azzata (“Azzata”) (“Motion for Permanent Injunction”). The Court finds that good cause exists for the Court to grant the Commission’s Motion for Permanent Injunction. The Commission having filed a Complaint and Defendant Azzata having entered a general appearance; consented to the Court’s jurisdiction over him and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; waived any right to appeal from this Judgment; and Defendant

Azzata has agreed to the entry of this Judgment of Permanent Injunction and Other Relief (“Judgment of Permanent Injunction”). Accordingly, the motion is **GRANTED**, and the Court hereby orders as follows:

I.

PERMANENT INJUNCTION

A. Section 17(a) of the Securities Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor; about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

B. Section 10(b) and Rule 10b-5 of the Exchange Act

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment in or offering of securities, (B) the registration status of such offering or of such securities, (C) the prospects for success of any product or company, (D) the use of investor funds, or (E) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

C. Section 5(a) and 5(c) of the Securities Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who

receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise:
(a) any of Defendants Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

D. Section 15(a) of the Exchange Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is hereby permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), by using any means or instrumentality of interstate commerce, the mails, or any facility of any national securities by acting as broker or dealer by effect transactions in securities, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise:
(a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

E. Control Person Liability for Section 13(a) of the Exchange Act and Aiding and Abetting Violations of 13(a) of the Exchange Act

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is permanently restrained and enjoined from, directly or indirectly, controlling any person who violates Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by failing to timely and accurately file annual and quarterly reports with the Commission regarding its assets, liabilities, and related party descriptions and transactions; omitting information necessary to make the required information, in the light of the circumstances under which they were made,

not misleading; and by filing or causing to be filed with the Commission materially false and misleading financial statements, unless Defendant acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Azzata is permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] by knowingly or recklessly providing substantial assistance to an issuer that fails to timely and accurately file annual and quarterly reports with the Commission regarding its assets, liabilities, and related party descriptions and transactions; omitting information necessary to make the required information, in the light of the circumstances under which they were made, not misleading; and by filing or causing to be filed with the Commission materially false and misleading financial statements,.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraphs also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

F. Exchange Act Rule 13a-14

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is hereby permanently restrained and enjoined from violating Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by, directly or indirectly, as an officer or director of an issuer, falsely certifying in annual and quarterly reports that based on his knowledge, disclosure reports did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under

which such statements were made, not misleading with respect to the period covered by the report.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment of Permanent Injunction by personal service or otherwise: (a) any of Defendant Azzata's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Azzata or with anyone described in (a).

II.

ASSET FREEZE

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that until the Court enters Final Judgment:

- A. Defendants Azzata, and of his directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with him, and each of them, who receive notice of this order by personal service, mail, email, facsimile transmission or otherwise, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, personal property, real property, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of, whether jointly or singly, and wherever located; however, any amount after the payment of taxes less than \$12,500 (in the form of cash, securities, personal property, real property, or other items of value) that Defendant Azzata receives in any calendar month after entry of this Order is not subject to the asset freeze; and
- B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendant Azzata, directly or indirectly, held jointly or singly, and wherever

located, and which receives actual notice of this order by personal service, mail, email, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets.

III.

DISGORGEMENT, PREJUDGMENT INTEREST THEREON & CIVIL PENALTY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Court shall determine the amounts of the disgorgement, prejudgment interest thereon, and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from January 1, 2014 through the date of filing the Commission's Motion to set disgorgement and prejudgment interest thereon, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement, prejudgment interest thereon, and/or civil penalties, and at any hearing held on such a motion: (a) Defendant Azzata will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant Azzata may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court, except that Defendant Azzata may contest the amount of money or compensation received and the amount of disgorgement; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of

Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

PENNY STOCK BAR

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Azzata is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

V.

OFFICER AND DIRECTOR BAR & BAR FROM VOTING ECAREER'S STOCK

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant Azzata is permanently barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to Section 21(d)(5) of the Exchange Act, Section 305(b)(5) of the Sarbanes-Oxley Act of 2002, and the Court's equitable powers, Azzata is permanently barred from voting any shares of eCareer Holdings, Inc. or eCareer, Inc. he, directly or indirectly, owns or controls.

VI.

RECORDS PRESERVATION

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that until further Order of the Court, Defendant Azzata, any of his directors, officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with him, and each of them, be and they hereby are restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files and other property of or pertaining to any of the Defendants or Relief Defendants, wherever located and in whatever form, electronic or otherwise.

VII.

BANKRUPTCY NONDISCHARGEABILITY

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant Azzata, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by either of them under this Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Azzata of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VIII.

INCORPORATION OF THE CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendant Azzata to a Judgment of Permanent Injunction and Other Relief is incorporated herein with the same force and effect as if fully set forth herein, and that he shall comply with all of the undertakings and agreements set forth therein.

IX.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendant Azzata in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

X.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED this ____ day of ____ 2015, at Fort Lauderdale, Florida.

**UNITED STATES DISTRICT JUDGE
JAMES I. COHN**

Copy to all counsel and parties of record