

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

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.

ORDER GRANTING PLAINTIFF'S MOTION FOR APPOINTMENT OF RECEIVER

THIS CAUSE is before the Court upon Plaintiff's Unopposed Motion for Appointment of Receiver over Defendants eCareer Holdings, Inc. and eCareer, Inc. [DE 68]. The Court has reviewed the Motion and the record in this case, and is otherwise advised in the premises.

In the Motion, Plaintiff seeks the appointment of a receiver over Defendants eCareer Holdings, Inc. and eCareer, Inc. (collectively "Corporate Defendants") with full and exclusive power, duty and authority to: administer and manage the business affairs, funds, assets, causes in action and any other property of the Corporate Defendants; marshal and safeguard all of their assets; and take whatever actions are necessary for

the protection of the investors. See generally DE 68. The Court finds the appointment of a receiver warranted in this case to maintain the status quo with regard to the Corporate Defendants, and to prevent diversion and waste of their assets. See generally SEC v. First Fin. Grp. of Texas, 645 F.2d 429, 439 (5th Cir. 1981). The Court also notes that Plaintiff's Motion is unopposed. It is accordingly

ORDERED AND ADJUDGED that Plaintiff's Unopposed Motion for Appointment of Receiver over Defendants eCareer Holdings, Inc. and eCareer, Inc. [DE 68] is **GRANTED**. David Levine, Esq. is hereby appointed the Receiver over the Corporate Defendants, their subsidiaries, successors and assigns, and is authorized, empowered, and directed to:

1. Take immediate possession of all property, assets and estates of every kind of the Corporate Defendants, whatsoever and wheresoever located belonging to or in the possession of the Corporate Defendants, including but not limited to all offices maintained by the Corporate Defendants, rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Corporate Defendants wherever situated, and to administer such assets as is required to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court;
2. Investigate the manner in which the affairs of the Corporate Defendants were conducted and institute such actions and legal proceedings, for the benefit and on behalf of the Corporate Defendants and their investors and other creditors, as

the Receiver deems necessary against those individuals, corporations, partnerships, associations and/or unincorporated organizations, which the Receiver may claim have wrongfully, illegally or otherwise improperly misappropriated or transferred monies or other proceeds directly or indirectly traceable from investors in the Corporate Defendants, including the Corporate Defendants, the other Defendants, and the Relief Defendants, their officers, directors, employees, affiliates, subsidiaries, or any persons acting in concert or participation with them, or against any transfers of money or other proceeds directly or indirectly traceable from investors in the Corporate Defendants; provided such actions may include, but not be limited to, seeking imposition of constructive trusts, disgorgement of profits, recovery and/or avoidance of fraudulent transfers under Fla. Stat. § 726.101, *et seq.*, or otherwise, rescission and restitution, the collection of debts, and such orders from this Court as may be necessary to enforce this Order;

3. Present to this Court periodic reports (no less than quarterly) reflecting the existence and value of the assets of the Corporate Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Corporate Defendants;
4. Appoint one or more special agents, employ legal counsel, actuaries, accountants, clerks, consultants and assistants as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, as well as all reasonable expenses of taking possession of the assets and business of the Corporate Defendants, and exercising the power granted by

this Order, subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation;

5. Engage persons in the Receiver's discretion to assist the Receiver in carrying out the Receiver's duties and responsibilities, including, but not limited to, the United States Marshal's Service or a private security firm;
6. Defend, compromise or settle legal actions, including the instant proceeding, in which the Corporate Defendants or the Receiver are a party, commenced either prior to or subsequent to this Order. The Receiver may also waive any attorney-client or other privilege held by the Corporate Defendants;
7. Assume control of, and be named as authorized signatory for, all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds, wherever situated, of the Corporate Defendants and, upon order of this Court, of any of their subsidiaries or affiliates, provided that the Receiver deems it necessary;
8. Make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by the Receiver, and incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging the Receiver's duties; and
9. Have access to and review all mail of the Corporate Defendants and the mail of the other Defendants or Relief Defendants (except for mail that appears on its face to be purely personal or attorney-client privileged) received at any office or address of the Corporate Defendants. All mail addressed to the other Defendants

or Relief Defendants that is opened by the Receiver and, upon inspection, is determined by the Receiver to be personal or attorney-client privileged, shall be promptly delivered to the addressee and the Receiver shall not retain any copy.

It is further **ORDERED AND ADJUDGED** that, in connection with the appointment of the Receiver:

1. The Corporate Defendants and all of their directors, officers, agents, employees, attorneys, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Corporate Defendants shall deliver forthwith upon demand such property, monies, books and records to the Receiver, and shall forthwith grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Corporate Defendants;
2. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of, or for the benefit of, the Corporate Defendants shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;
3. Unless authorized by the Receiver, the Corporate Defendants and their principals shall take no action, nor purport to take any action, in the name of or on behalf of the Corporate Defendants;
4. The Receiver further is authorized to take depositions and other discovery on seven calendar days' notice. The Corporate Defendants and their principals, and

respective officers, agents, employees, attorneys, and attorneys-in-fact shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;

5. The Receiver, and any counsel whom the Receiver may select, are entitled to reasonable compensation from the assets now held by or in the possession or control of or which may be received by the Corporate Defendants; said amount or amounts of compensation shall be commensurate with their duties and obligations under the circumstances, subject to approval of the Court. The Receiver and his counsel shall file with the Court no less than quarterly an application for reasonable compensation and provide to Plaintiff and the Court a copy of Plaintiff's Standard Fund Accounting Report.
6. During the period of this receivership, all persons, including creditors, banks, investors, or others, with actual notice of this Order, are enjoined from filing a petition for relief under the United States Bankruptcy Code without prior permission from this Court, or from in any way disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Corporate Defendants;
7. The Receiver is fully authorized to proceed with any filing the Receiver may deem appropriate under the Bankruptcy Code as to the Corporate Defendants;

8. Title to all property, real or personal, all contracts, rights of action and all books and records of the Corporate Defendants and their principals, wherever located within or without this state, is vested by operation of law in the Receiver;
9. Upon request by the Receiver, any company providing telephone services to the Corporate Defendants shall provide a reference of calls from any number presently assigned to the Corporate Defendants to any such number designated by the Receiver or perform any other changes necessary to the conduct of the receivership;
10. Any entity furnishing water, electric, telephone, sewage, garbage or trash removal services to the Corporate Defendants shall maintain such service and transfer any such accounts to the Receiver unless instructed to the contrary by the Receiver;
11. The United States Postal Service is directed to provide any information requested by the Receiver regarding the Corporate Defendants, and to handle future deliveries of the Corporate Defendants' mail as directed by the Receiver;
12. No bank, savings and loan association, other financial institution, or any other person or entity shall exercise any form of set-off, alleged set-off, lien, or any form of self-help whatsoever, or refuse to transfer any funds or assets of the Corporate Defendants to the Receiver's control without the permission of this Court;
13. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence or greater, the Receiver shall not be liable for any loss or damage incurred by the Corporate Defendants or by the

Receiver's officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

14. Service of this Order shall be sufficient if made upon the Corporate Defendants and their principals by personal service, facsimile or overnight courier;
15. In the event that the Receiver discovers that investor funds received by the Corporate Defendants have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, extending this receivership over any person or entity holding such investor funds; and
16. This Court shall retain jurisdiction of this matter for all purposes.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 22nd day of May, 2015.



JAMES I. COHN
United States District Judge

Copies provided to:
Counsel of record via CM/ECF
Pro se parties via regular mail