

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 SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR A FINAL JUDGMENT SETTING THE MONETARY AMOUNTS
AGAINST DEFENDANTS DEAN A. ESPOSITO AND JOSEPH DEVITO AND RELIEF
DEFENDANTS VIPER ASSET MANAGEMENT, LLC, ESPO CONSULTING, LLC,
DJC CONSULTING, LLC, AND J & D MARKETING, LLC**

This cause comes before the Court upon the Motion by Plaintiff Securities and Exchange Commission for a Final Judgment Setting the Monetary Amounts against Defendants Dean A. Esposito (“Esposito”) and Joseph DeVito (“DeVito”) and Relief Defendants Viper Asset Management, LLC (“Viper Asset Management”), Espo Consulting, LLC, (“Espo Consulting”), DJC Consulting, LLC (“DJC Consulting”), and J & D Marketing, LLC (“J & D Marketing”) (“Motion for Final Judgment”). The Court finds that good cause exists for the Court to grant the Commission’s Motion for Final Judgment.

On April 7, 2015, the Plaintiff Securities and Exchange Commission filed a Complaint against Defendants Esposito and Devito; Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing; and others. [See DE 1]. On June 18, 2015, the Court approved the entry of a Judgment of Permanent Injunction and Other Relief against Defendants Esposito and Devito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing, which, among other things, left for future resolution the amount the Court will require them to pay to resolve the Commission's monetary claims. [See DE 83-2 & 88]. Now, the Defendants, by the attached Consent, Defendants Esposito and Devito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing have consented to a Final Judgment Setting Monetary Amounts ("Consent").

Moreover, Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting and J & D Marketing having entered a general appearance; consented to the Court's jurisdiction over them and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and as otherwise provided herein); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment; and Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing have agreed to the entry of this Final Judgment Setting the Monetary Amounts ("Final Judgment"). Accordingly, the motion is **GRANTED**, and the Court hereby orders as follows:

I.

DISGORGMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

IT IS ORDERED, ADJUDGED, AND DECREED that Esposito, Devito, Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing, shall jointly and severally pay disgorgement of \$2,128,000 and pay \$108,457 of prejudgment interest thereon. Hence, in total, Esposito, Devito, Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall, jointly and severally, pay \$2,236,457 in disgorgement and prejudgment interest.

In addition, Esposito and Devito shall also each pay a \$300,000 civil money penalty, pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)].

II.

PAYMENT INSTRUCTIONS

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that within thirty (30) days after the entry of tis Final Judgment, Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall jointly and severally pay the \$2,236,457 ordered herein, plus post-judgment interest thereon, which shall start accruing thirty (30) days after the entry of this Final Judgment.

In addition, within thirty (30) days after the entry of tis Final Judgment, Defendants Esposito and DeVito, shall each pay a \$300,000 civil money penalty, plus post-judgment interest thereon, which shall start accruing thirty (30) days after the entry of this Final Judgment.

Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall satisfy their obligation to pay the

Commission the above referenced amounts, by making payments to the Court appointed Receiver in this matter, unless the Receiver has been charged, then they shall pay the above referenced payments to the Commission. Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall request payment instructions from the Receiver or the SEC. The Receiver shall hold all funds he receives from Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing in a segregated account and shall periodically report to the Court the amount of funds he has received. When making payment, Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall also simultaneously transmit photocopies of evidence of payment and case identifying information to Christopher E. Martin, Esq, the Commission's counsel in this action.

By making payment to the Receiver or the Commission, Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to any of them.

Esposito, Devito, Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

Moreover, Esposito and DeVito shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amount paid pursuant to this Final Judgment, regardless of whether such penalty amounts or any party thereof are added to a

distribution fund or otherwise used for the benefit of investors. They further shall not claim, assert, or apply for tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts any of them pays pursuant to this Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent of Defendants Esposito and Devito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing for Final Judgment Setting Monetary Amounts (“Consent”) is incorporated herein with the same force and effect as if fully set forth herein, and that they shall comply with all of the undertakings and agreements set forth therein.

IV.

BANKRUPTCY NONDISCHARGEABILITY

IT IS FURTHER ORDERED AND ADJUDGED 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 Esposito and Devito, and further, any debt for disgorgement, prejudgment interest or civil penalty or other amounts due by Esposito or Devito or Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, or J & D Marketing in this action are debts for the violations by Esposito and DeVito 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).

V.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED that this Court shall retain jurisdiction over this matter and Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing 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. Moreover, the permanent injunctive relief that the Court imposed in Sections I (PERMANENT INJUNCTION), II (COMMAND TO COMPLY WITH PRIOR ORDERS), and V (PENNY STOCK BAR) of the Judgment of Permanent Injunction and Other Relief Against Defendants Esposito and DeVito and Relief Defendants Viper Asset Management, Espo Consulting, DJC Consulting, and J & D Marketing (*see* DE 83-2 & DE 88) shall remain in full force and affect.

VI.

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 Final Judgment forthwith and without further notice.

DONE AND ORDERED this 29th day of February 2016, at Fort Lauderdale, Florida.


UNITED STATES DISTRICT JUDGE
JAMES I. COHN

Copy to all counsel and parties of record