

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 78994 / September 29, 2016**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32297 / September 29, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17597**

**In the Matter of**

**JAMES E. CLEARY, JR.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, AND SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against James E. Cleary, Jr. (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

These proceedings arise out of Respondent's participation as an unregistered broker-dealer in the offer and sale of securities by eCareer Holdings, Inc., and eCareer, Inc. (collectively, "eCareer") in interstate commerce. On April 7, 2015, the Commission filed an emergency injunctive action in federal district court charging eCareer and their principals with, among other things, the ongoing unregistered offer and sale of securities nationwide by raising approximately \$11 million from more than 400 investors. *SEC v. eCareer Holdings, Inc., et al.*, Civil Action No. 9:15-CV-80446-JIC-COHN (S.D. Fla.). Respondent, acting as an unregistered sales agent of eCareer, offered and sold eCareer's stock to investors and earned transaction-based compensation from each sale.

#### **Respondent**

1. Respondent, James E. Cleary, Jr., 45, is a resident of Delray Beach, Florida. Respondent solicited and sold shares of eCareer stock to multiple investors. From 1996 to 2006, Cleary was a registered representative associated with various registered broker-dealers, including Emerson Bennett & Associates (1999 – 2001) and Hunter Scott Financial LLC (2004 – 2006). In 2002, without admitting or denying allegations of sales practice violations, Cleary was suspended from association with any NASD member firm for 30 days. In 2007, the NASD revoked Cleary's registration for failure to pay fines and/or costs in connection with an NASD case. Respondent participated in the offer and sale of eCareer's stock, which is a penny stock.

#### **Other Relevant Entities**

2. eCareer Holdings, Inc. was a Boca Raton, Florida-based issuer that had its securities quoted on OTC Link, operated by OTC Markets Group, Inc., under the ticker ECHI. The company purported to operate an online staffing business. On June 18, 2015, the Commission obtained a permanent injunction against eCareer Holdings, Inc.

3. eCareer, Inc. was a Boca Raton, Florida corporation, incorporated in 2009 and served as the wholly-owned subsidiary of eCareer Holdings. On June 18, 2015, the Commission obtained a permanent injunction against eCareer Inc.

#### **Other Relevant Individual**

4. Joseph J. Azzata, age 57, was Chief Executive Officer of eCareer. Azzata formerly was a registered representative associated with various registered broker-dealers from

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

1994 to 2004, but is not currently registered with the Commission in any capacity. On October 2, 2015, the Commission obtained a permanent injunction and other relief against Azzata concerning violations of the anti-fraud provisions of the federal securities laws. On October 26, 2015, the Commission instituted settled administrative proceedings barring Azzata from, among other things, associating with any broker or dealer and from participating in penny stock offerings.

## Facts

### *eCareer and Azzata's Misconduct*

5. From at least 2010 to 2015, eCareer through and at the direction of its principal Azzata and others fraudulently raised at least \$11 million from sales of securities to hundreds of investors nationwide to allegedly develop its online staffing business.

6. eCareer, Azzata and others represented to investors their money would be invested in developing eCareer's online staffing business. Investors relied on Azzata and others to develop the business and manage their investments, including the issuance of shares. None of these investors were told about any risks associated with an investment in eCareer.

7. eCareer, through its principals, made representations to investors about the use of proceeds and profitability that were false. Bank records, invoices and company documents show that eCareer charged investors fees of approximately 30% of investor proceeds, in contrast to much lower amounts represented in the company's private placement memoranda. Moreover, Azzata misappropriated investor proceeds to pay for personal expenses and sold restricted shares of eCareer's penny stock to unaccredited or unsophisticated investors in unregistered, non-exempt transactions. Azzata and others sold eCareer penny stock to investors while concealing prior disciplinary history, broker-dealer and penny stock bars.

### *Respondent Acted as an Unregistered Broker-Dealer*

8. Respondent, from approximately April 2014 through March 2015, received \$143,250 in transaction-based compensation from eCareer in exchange for soliciting and securing investors through the use of telephone and/or email.

9. While regularly participating in these securities transactions and receiving transaction-based compensation from eCareer, Respondent was not registered or associated with a registered broker-dealer. As a result of the conduct described above, Respondent willfully violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for any broker or dealer to use the mails or any other means of interstate commerce to "effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security" unless that broker or dealer is registered with the Commission in accordance with Section 15(b) of the Exchange Act.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Cleary's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent James E. Cleary, Jr. cease and desist from committing or causing any violations and any future violations of Section 15(a)(1) of the Exchange Act.

B. Respondent James E. Cleary, Jr., be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, nationally recognized statistical rating organization; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and is barred from participating in any offering of penny stock including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$143,250 and prejudgment interest of \$3,490.13 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent shall, within 30 days of the entry of the Order, pay a civil money penalty in the amount of \$7,500.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

F. Payments pursuant to this Order must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying James E. Cleary, Jr. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Christopher E. Martin, U.S. Securities and Exchange Commission, 801 Brickell Avenue, Miami, FL, 33131.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

H. All funds paid by Respondent pursuant to this Order shall be transferred to the Receiver appointed in *SEC v. eCareer Holdings, Inc., et al.*, Civil Action No. 9:15-CV-80446-JIC-COHN (S.D. Fla.) to be distributed for the benefit of investor victims according to a distribution plan to be approved by the court in that litigation. In the event the receivership has been terminated and the payments due under paragraphs IV.D and E have not been made in full, then the remaining payments made by Respondent to the Commission shall be transmitted to the U.S. Treasury.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent 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).

By the Commission.

Brent J. Fields  
Secretary