

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TD BANK, N.A.,

Plaintiff,

v.

ADVANCED CAREER TECHNOLOGIES,
INC., ADVANCED CAREER
TECHNOLOGIES -MARYLAND, LLC,
THE CAREER INSTITUTE, LLC, ABC
TRAINING CENTER OF MARYLAND,
INC.,

Defendants.

Civil Action No. 1:13-cv-10152-GAO

ORDER GRANTING
MOTION BY RECEIVER FOR ORDER (A) APPROVING PROTOCOL
FOR THE ADMINISTRATION OF STUDENT LOANS; (B) AUTHORIZING
THE ABANDONMENT OF CERTAIN PERSONAL PROPERTY;
(C) COMPELLING ACCESS TO CERTAIN ACI RECORDS;
AND (D) CONFIRMING JOINT PRIVILEGE AND PRIVACY RIGHTS

This matter having come before the Court on the *Motion by Receiver For Order (A) Approving Protocol For The Administration of Student Loans; (B) Authorizing The Abandonment of Certain Personal Property; (C) Compelling Access to Certain ACI Records; And (D) Confirming Joint Privilege And Privacy Rights* (the "Motion") [docket no. 70] dated August 2, 2013; and the Court having considered any objections to the Motion; and the Court having jurisdiction to rule on the Motion; and notice of the hearing on the continued use of cash collateral being good and sufficient notice under the circumstances; and it appearing from the record before the Court that sufficient cause exists for the entry of this order; the Court

FINDS AS FOLLOWS:

A. On January 24, 2013, the TD Bank, NA (the "Bank") initiated the above-captioned civil action seeking, the appointment of a receiver and to recover more than \$12,000,000 from The Career Institute, LLC, Advanced Career Technologies, Inc., Advanced Career Technologies -Maryland, LLC, and ABC Training Center Of Maryland, Inc. (collectively "ACI"). In its complaint, the Bank also asserts that it holds a first priority security agreement on ACI's accounts as well as substantially all of their other assets.

B. Francis C. Morrissey (the "Receiver") was appointed as receiver for ACI by order dated February 13, 2013.

C. Prior to commencement of this civil action, ACI operated eight for-profit educational institutions in Massachusetts and Maryland. In January 2013, ACI abruptly closed its schools.

D. This case arises out of a secured loan made by TD Bank, N.A. (the "Bank") to finance ACI's "for profit" educational business.

E. On or about January 10, 2013, ACI abruptly closed their school and ceased operating as a going concern. At the time, approximately 1,400 students were enrolled at ACI who were unable to complete training programs with ACI (collectively the "Affected Students").

F. As a result of ACI's closure of its campuses and the impact of the closure on ACI's students, governmental agencies from the Commonwealth of Massachusetts, the State of Maryland and the United States Department of Education opened files on ACI, including, among others, the offices of the Attorneys General for the Commonwealth of Massachusetts and the State of Maryland.

A. The Affected Student Protocol.

G. Through the Motion, the Receiver seeks, among other things, Court approval of protocol for administering ACI's accounts receivable from the Affected Students (the "Protocol").

H. Attached as Exhibit A is a chart describing the Protocol.

I. The Protocol is designed to collect accounts receivable only from those Affected Students that received what they paid for -- all or a usable part of an education -- while discharging the accounts receivable due from those Affected Students who did not receive what they paid for. The Protocol is reasonable and approval of the Protocol is in the best interest of the Affected Students as it will help bring closure to their relationship with ACI, and is in the best interest of the and the receivership estate (the "Estate") because it will prevent any confusion, delay and additional administrative expense that would arise from seeking to collect uncollectible accounts receivable from the Affected Students.

B. Personal Property.

J. The Receiver has obtained the assistance of a qualified appraiser and auctioneer to value the Estate's interest in ACI's personal property (the "FF&E").

K. Based upon the advice of his appraiser and auctioneer and the results of the discussion with ACI's landlords, the Receiver has determined, in his business judgment, that abandonment of the FF&E located in Maryland is in the best interest of this estate, as an on-site sale is not possible and the cost to retrieve, store and then auction the Maryland FF&E will likely exceed its estimated sale prices.

L. The Receiver has also determined, in his business judgment, that there is no realizable value for the Estate in the sale of the leased FF&E.

M. The Receiver's business judgment in these respects is uncontroverted, and grounds therefore exist to authorize the Receiver to abandon: (i) any FF&E located in Maryland, and (ii) any leased FF&E.

C. Access to Records.

N. It is necessary for the Receiver to have unfettered access to ACI's records, whether in electronic or paper form.

O. Inasmuch as the Receiver stands in place of ACI, neither ACI nor its current or former directors and officers, nor their agents, will violate any student privacy laws by providing the Receiver with access to and/or copies of ACI's records, in whatever form.

P. The Receiver and ACI jointly share any privilege with respect to ACI's records, in whatever form.

Q. ACI's primary electronic records are currently maintained by a third party, Haystack ID ("Haystack"), that was retained by ACI's former officers and/or directors prior to the appointment of the Receiver. ACI's primary paper records are currently in the possession of the following different parties: (i) the Receiver, (ii) ACI and its agents, and (iii) Massachusetts and Maryland state regulatory agencies.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Protocol is approved. The Receiver is authorized to implement the Protocol.
2. The approval of the Protocol is without prejudice to any claims that the Commonwealth of Massachusetts, the State of Maryland, and/or some of the Affected Students may have against ACI and/or the Estate; and all rights, claims and defenses by ACI, the Estate and/or any party in interest with respect to any claims by any party are correspondingly preserved.

3. The Receiver is authorized, but not directed, to abandon: (a) any FF&E located in Maryland, and (b) any leased FF&E.

4. With respect to ACI's electronic records:

- a. Haystack shall maintain possession of the electronic records it currently maintains. Both the Receiver and ACI (collectively the "Parties" and individually a "Party") may freely access any ACI records (whether electronic or not) at Haystack upon providing at least three (3) business days' notice to the other Party.
- b. Should a third party or any governmental entity request access to any ACI records in the possession of Haystack, the Party receiving the request shall notify the other Party of such request as soon as practicable.
- c. No ACI records in the possession of Haystack shall be created or modified.

5. Each Party shall have the ability to access the paper and/or tangible records in the possession of the other Party for the following purposes: responding to governmental requests, responding to student requests, conducting a 401K audit, taking actions relating to taxes and payroll, defending litigation against a Party, collecting ACI's accounts receivable, and any other action necessary to administer the Estate. ACI shall cooperate with the Receiver to facilitate his access of any ACI records, whether in the possession of Haystack or otherwise.

6. The Receiver and ACI jointly hold any privilege belonging to ACI. Accordingly, ACI's production of documents and information to the Receiver shall not constitute a waiver of any privilege applicable to that information, including the attorney-client privilege and the work product doctrine, as to the information produced or as to the subject matter thereof. The Receiver and his professionals have the right to review any allegedly privileged documents or information and ACI shall not withhold information and/or documents from the Receiver on the grounds of privilege.

7. Neither the Receiver nor ACI shall knowingly waive ACI's privilege without first providing the other Party with notice of the proposed waiver and five (5) days to object to such waiver.

8. Nothing in this order shall restrict the right of the Receiver and/or ACI to request that this order be modified or vacated solely with respect to ACI's records, and the Receiver's and ACI's respective rights, claims and defenses with respect to any such request are preserved. Nothing in this order shall restrict the right of the Receiver to request the turnover of any documents or information by ACI, and ACI's rights, claims, and defenses with respect to any such request are preserved.

/s/ George A. O'Toole, Jr.
Honorable George A. O'Toole

Dated: 8/19, 2013

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EXHIBIT A

<u>DESCRIPTION OF AFFECTED STUDENT</u>	<u>AUTHORIZED ACTION</u>
<p>“Completers” – Affected Students who have completed their ACI programs and have received or are entitled to receive certificates of completion.</p>	<p>Completers – Accounts receivable due from Completers will remain in collection as these students have completed their training with ACI and ACI has issued or will issue a certificate of completion to these students.</p>
<p>“Fresh Starts” – Affected Students who had paid or incurred a portion of their tuition costs prior to ACI’s closure but had not yet begun their program or had not yet completed a single course.</p>	<p>Fresh Starts – Accounts receivable due from Fresh Starts will be discharged and no further collection efforts will be undertaken as these students have not completed any portion of their training with ACI.</p>
<p>“Discharges” – Affected Students who were at various points in their programs and either opted to discontinue their training by not participating in a teach-out or transfer opportunity or who did not have such an opportunity. Discharges are seeking full discharges of their federal and ACI debts.</p>	<p>Discharges – Accounts receivable due from Discharges will be discharged and no further collection efforts will be undertaken as these students will not obtain a certificate of completion from ACI and cannot use the training they have received from ACI toward future education programs at other institutions.</p>
<p>“Teach-Outs” – Affected Students who participated in courses or externships arranged by state regulators through other schools in order to complete their program. Teach-Outs receive a certificate of completion from ACI (in Massachusetts) or from the teach-out school (in Maryland) upon their completion. These Affected Students (in Maryland) will pay no more than their total contracted price with ACI in order to complete their programs.</p>	<p>Teach-Outs – Accounts receivable due from Teach-Outs will be collected to the extent that the coursework corresponding to the accounts receivable was administered by ACI. Balances due from Teach-Outs will be discharged and no further collection efforts will be undertaken to the extent that the amount is due for coursework that was not taken at ACI.</p>
<p>“Transfers” – Affected Students who did not participate in a teach-out but opted to transfer to another institution. Transfers will complete their programs at another institution which will issue its certificate of completion. These Affected Students will have to pay for courses taken at a transfer institution.</p>	<p>Transfers – Accounts receivable due from Transfers will remain on ACI’s books for coursework taken at ACI that was accepted by the institution to which the student transferred. Balances due from Transfers will be discharged and no further collection efforts will be undertaken to the extent that the training ACI provided was non-transferrable or to the extent that the coursework necessary to complete the program was not provided by ACI.</p>