

PRELIMINARY STATEMENT

Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney Inc., Smith Barney Corporate Trust Company, Sanford I. Weill, State Street Corporation and David A. Spina (collectively, the “Defendants”) respectfully submit this opposition to Plaintiff’s Motion for Rule 11 Sanctions.¹

Plaintiff’s motion for sanctions under Rule 11 epitomizes the very sort of bad faith filing that Rule 11 was designed to prevent. Indeed, Plaintiff’s motion amounts to his fifth attempt to persuade the Court that “Citistreet” and “Copeland Associates, Inc.” are viable legal entities.

First, after Defendants’ counsel sent numerous letters to Plaintiff’s counsel explaining that these entities did not exist, and that Plaintiff had otherwise named the correct entities involved in the dispute, in March 2003, Plaintiff’s counsel requested that the Clerk of the Court note a default against Citistreet and Copeland Associates, Inc., and then subsequently wrote a letter to the Clerk of the Court demanding that a default be entered against these non-existent entities. The Clerk took no action on these requests. See Affidavit of David Lender, dated July 7, 2004 (“Lender Aff.”) ¶ 6 (attached hereto as Exhibit B).

¹ Plaintiff’s request to impose sanctions against Robert C. Dughi is baseless because Rule 11 does not permit awards of sanctions against employees, high ranking or otherwise, of parties to lawsuits. Plaintiff’s request for sanctions against Peter Hageman, Esq. is equally baseless as he never certified a paper that has been challenged by Plaintiff and filed with this Court. Thus, as to these individuals, Plaintiff’s motion for sanctions should be denied.

Second, Plaintiff next filed a motion for default judgment against Citistreet and Copeland Associates, Inc., which resulted in full briefing and a hearing before Magistrate Judge Pohorelsky, during which the Court characterized Plaintiff's position as amounting to "playing games." Id. ¶¶ 7, 10. Indeed, in furtherance of his vexatious and frivolous conduct in this case, Plaintiff also recently filed a second motion to disqualify Magistrate Judge Pohorelsky, primarily on the ground that he is supposedly biased against their case because he thought their default judgment motion was without merit.²

Third, the issue was briefed again in Defendants' motion to dismiss, in which Defendants moved to dismiss the entire Complaint against all of the Defendants, including against Citistreet and Copeland Associates, Inc. on the ground that those companies did not exist. See Id. ¶ 8.

Fourth, on April 23, 2004, Plaintiff once again sought to have the Clerk of the Court enter a default judgment against these non-existent entities. The Clerk of the Court again declined to do so. Id. ¶¶ 11-12.

Now, Plaintiff attempts to reassert his position for a fifth time under the guise of a motion for sanctions, arguing that Defendants' assertions that the two entities do not exist are lacking in evidentiary support and have not been asserted in good faith. Given the evidence submitted by Defendants in response to Plaintiff's motion for default judgment – which, despite what Plaintiff says has not been controverted by any of

² The motion to disqualify is clearly baseless since the law is clear that alleged judicial bias based upon rulings made in the case are insufficient to support recusal. See, e.g. Bicansiz v. United States, 234 F.Supp.2d 202, 206 (E.D.N.Y. 2002).

Plaintiff's purported evidence – as well as the Court's admonishments of Plaintiff's counsel at the hearing on Plaintiff's motion for default judgment that Plaintiff's counsel was "playing games," the position advanced by Plaintiff in support of his sanctions motion could not be further from reality and is, itself, sanctionable.

Furthermore, at the hearing on Plaintiff's motion for default judgment, the Court expressly endorsed the factual showing made by the Defendants that "Citistreet" and "Copeland Associates, Inc." are not viable legal entities. And, in this vein, the Court noted that Defendants' showing in opposition to Plaintiff's motion was, indeed, "convincing" and acknowledged, at most, the existence of "a factual dispute" that could be resolved through discovery. See Id., Ex. F at 7-8. Putting aside the other attempts by Plaintiff's counsel to raise this very same issue time and time again, the Court's pronouncements at the hearing on Plaintiff's motion for default judgment – standing alone – reveal that Plaintiff's motion for sanctions is patently frivolous.

In fact, what makes Plaintiff's latest efforts even more suspect is the fact that "Citistreet" and "Copeland Associates, Inc." have not defaulted. To the contrary, Defendants asserted arguments in favor of the dismissal of these two non-existent entities in their motion to dismiss the Complaint (not to mention in their response to Plaintiff's motion for default judgment). In addition, Defendants' motion to dismiss is directed to all of the claims asserted in the Complaint so that, if the motion is granted, there would be no basis for granting any default judgment against these two non-existent entities.³

³ Of course, if the Court were to somehow resolve the motion against "Citistreet" and "Copeland Associates, Inc.," Defendants would file an answer on their behalf, even though these entities do

The magistrate judge clearly recognized this by deferring ruling on the motion for default judgment until after the motion to dismiss is resolved by the Court. See Id., Ex. F at 2-3; 5; 7-8.

Accordingly, because this is the fifth time Defendants have been compelled to incur time and expense in responding to the very same allegations raised by Plaintiff and, more importantly, because Plaintiff's motion for sanctions directly contravenes the position that the Court has already expressly endorsed, Defendants respectfully request that Plaintiff's motion be denied and that the Defendants be awarded their costs and attorneys' fees incurred in defending against Plaintiff's motion for sanctions, pursuant to Rule 11(c)(1)(A).

ARGUMENT

I. DEFENDANTS' ASSERTIONS THAT "CITISTREET" AND "COPELAND ASSOCIATES, INC." ARE NOT COGNIZABLE LEGAL ENTITIES ARE AMPLY SUPPORTED BY BOTH THE LAW AND THE FACTS

Contrary to what Plaintiff has repeatedly attempted to convince the Court (and the Clerk of the Court), "Citistreet" and "Copeland Associates, Inc." are not cognizable legal entities. Defendants made more than a sufficient legal and factual showing to demonstrate this in response to Plaintiff's motion for default judgment. See Defendants' Response to Plaintiff's Motion for Default Judgment Against "Copeland Associates, Inc." and "Citistreet," the Affidavit of Robert C. Dughi, and the Affidavit of David Lender, collectively attached hereto as Exhibit A. Indeed, the proof attached to Defendants' response – which included a sworn affidavit from Mr. Dughi, the President

not exist, in order to protect the companies that do exist and which have been named as defendants in the case.

of Citistreet LLC and Chairman and Chief Executive Officer of Citistreet Associates LLC – standing alone establishes that Defendants have not asserted their position in bad faith, that Defendants’ position is objectively reasonable, and that an award of sanctions to Plaintiff should therefore be denied. See, e.g., Estate of Miles Davis v. Trojer, 287 F.Supp.2d 455, 456 (S.D.N.Y. 2003) (ruling that complaint was not so baseless to warrant an award of sanctions, but awarding sanctions based on the filing of a meritless Rule 11 motion).

Moreover, on July 7, 2003, the Court held a hearing on Plaintiff’s motion for default judgment. See Lender Aff. ¶ 10. And crucially, throughout the hearing on Plaintiff’s motion, the Court expressly endorsed Defendants’ position that there are no cognizable legal entities named “Citistreet” and “Copeland Associates, Inc.,” and further hinted that it was Plaintiff’s motion for default judgment – not the Defendants’ opposition – that had been filed in contravention of Rule 11. The following excerpts from the transcript make the Court’s position as to Plaintiff’s motion for default judgment and Defendants’ opposition abundantly clear:

The defendants, it seems to me, have made a pretty convincing factual showing that . . . there is no Citistreet, regardless of what the advertisements may say. At the very least, it is a factual dispute which you would need to have discovery on.

Then Copeland Associates, Inc. - - there seems to be a clear line of facts showing that Copeland Associates, Inc. was merged into another company and it doesn’t exist. So I don’t understand why you are going through this rigmarole.

*

*

*

I have the distinct impression that you are just playing games, Mr. Grubel. It just doesn't make sense to me that you're spending this kind of effort going after [the non-existent entities] - - you have Citistreet LLP.

*

*

*

There is no company named Citistreet.

That's not what the law really allows, to play games with names like this in order to go after somebody else.

You're just trying to – you're just fooling around with words. You're just playing games is what you are doing.

See Lender Aff., Ex. F at 2-3; 5; 7-8. Accordingly, because the Court has already expressly endorsed Defendants' assertion that "Citistreet" and "Copeland Associates, Inc." do not exist, such assertion certainly should not be permitted to serve as a basis for sanctions. Plaintiff's motion for sanctions should therefore be denied.

II. PLAINTIFF'S "EVIDENCE" DOES NOT REFUTE THE FACT THAT NEITHER "CITISTREET" NOR "COPELAND ASSOCIATES, INC." ARE COGNIZABLE LEGAL ENTITIES

As demonstrated in Defendants' opposition to Plaintiff's motion for default judgment – and, not to mention, the Court's comments at the hearing on Plaintiff's motion – the Defendants have made more than an ample legal and factual showing that "Citistreet" and "Copeland Associates, Inc." are not cognizable legal entities. The additional "evidence" that Plaintiff has submitted in support of his motion for sanctions – like the "evidence" Plaintiff submitted in support of his motion for default judgment – does nothing to alter this conclusion. For these reasons as well, Plaintiff's motion for sanctions should be denied.

A. **“Citistreet” Does Not Exist Separate And Apart From Citistreet, LLC**

Plaintiff argues that “Citistreet” and “Citistreet, LLC” are two distinct legal entities by virtue of Plaintiff’s assertions that “Citistreet” is a joint venture between State Street Corporation and Citigroup, Inc. and that “there are major differences between a joint venture and an LLC.” Plaintiff’s Motion at 7. To support this argument, Plaintiff offers inapposite legal authority⁴ and unauthenticated printouts of pages from the worldwide web. What is completely lost on Plaintiff’s counsel is that a fundamental principle of corporate law allows joint ventures to take the form of limited liability companies. See, e.g., Leber v. Universal Music and Video Dist., Inc., 225 F.Supp.2d 928, 937 (S.D. Ill. 2002); Great Lakes Chemical Corp. v. Monsanto Co., 96 F.Supp.2d 376, 383 (D. Del. 2000).⁵ Indeed, in none of the aforementioned cases did the plaintiff sue both the joint venture and the LLC because they were one in the same entity. See Id.

Here too, the fact that Citistreet LLC can be characterized as a joint venture speaks merely to the way in which the shares of ownership have been divided and the fact that there are just two entities holding such shares, State Street Corporation and Citigroup, Inc. This by no means is indicative of the existence of another legal entity

⁴ Plaintiff’s discussion of New York’s limited liability company law in his motion for sanctions is also irrelevant as Citistreet, LLC was formed under the laws of Delaware. See Lender Aff., Ex. E (Dughi Affidavit, Ex. A).

⁵ See also In re: Cellnet Data Systems, Inc., 327 F.3d 242 (2d Cir. 2003); True North Composites, LLC v. Trinity Indus., Inc., 191 F.Supp.2d 484 (S.D.N.Y. 2002); Patricia J. Curto v. Smith, et al., 248 F.Supp.2d 132 (S.D.N.Y. 2003); Safe-Strap Co., Inc. v. Koala Corp., 270 F.Supp.2d 407 (S.D.N.Y. 2003).

named just “Citistreet.”⁶ And this is precisely what Mr. Dughi testified to in his affidavit filed in opposition to Plaintiff’s motion for default judgment. See, e.g., Lender Aff. Exhibit “E,” Affidavit of Robert Dughi (“Dughi Aff.”) at ¶2 (“Citistreet LLC is a Delaware limited liability company, owned by Citigroup Inc. and State Street Corporation”). Plaintiff’s “evidence” shows nothing more than that the limited liability company – Citistreet LLC – which Plaintiff has also named as a defendant, is owned in equal shares by State Street Corporation and Citigroup, Inc. as a joint venture, just as the limited liability companies in the cases cited above.⁷ See supra.

Moreover, and importantly, as Defendants argued in opposition to Plaintiff’s motion for default judgment, there do exist Citistreet entities that Plaintiff has correctly named as defendants to this action – Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, and Citistreet Financial Services LLC – but there is no cognizable legal entity called just “Citistreet.” Lender Aff., Ex. E (Dughi Aff. at ¶ 3, Ex. A) (certificate of formation of Citistreet LLC). Plaintiff has also named as defendants the owners of Citistreet LLC -- Citigroup, Inc. and State Street Corporation. Therefore, Plaintiff is not prejudiced in any way in this case because all of the relevant parties in

⁶ Plaintiff is correct that a joint venture is subject to suit as a joint venture. However, this argument overlooks the fact that a “joint venture” is permitted to avail itself of the laws protecting the liability of its interested holders, e.g. Delaware’s limited liability company act, and when it does so, it does not subject itself to suit twice, once as an LLC and once as a joint venture.

⁷ The fact that Citistreet LLC commonly refers to itself in abbreviated form as Citistreet without specific reference to its particular corporate form is not suspect or evidence that a separate entity called just “Citistreet” exists. For example, Weil, Gotshal & Manges LLP, the law firm representing the Defendants here, is commonly referred to as Weil, Gotshal. This, however, does not change the fact that Weil, Gotshal & Manges LLP is the proper legal entity.

existence are before the Court. Thus, in spite of Plaintiff's "evidence" – and particularly in light of the Court's position as to such evidence – Plaintiff's motion should be denied.

B. "Copeland Associates, Inc." Is Not A De Facto Corporation

As Defendants have repeatedly informed Plaintiff's counsel – and as they argued in opposition to Plaintiff's motion for default judgment – Copeland Associates, Inc. no longer exists because it merged into Citistreet Associates LLC in August of 2000. See Lender Aff., Ex. E (Dughi Affidavit, ¶ 5, Ex. B.) The certificates annexed to the Dughi Affidavit makes this irrefutable. See Id. The fact that Citistreet Associates LLC continued to use old Copeland check stock, as Plaintiff argues (see Grubel Aff. ¶ 16), does not alter the fact that Copeland Associates, Inc. no longer exists as a cognizable legal entity. To the contrary, it merely shows that Citistreet Associates LLC continued to utilize Copeland's old check stock following the conversion of Copeland. This is proven by the checks attached as Exhibits L and M to the Grubel Affidavit. Using the same account number, the earlier checks state Copeland Associates, Inc., but the later checks are signed by Mr. Dughi for Citistreet Associates.

Plaintiff further argues that the "de facto corporation" doctrine shows that "Copeland Associates, Inc." still exists. See Grubel Aff. ¶ 16. However, Plaintiff misapplies this doctrine. The de facto corporation doctrine does not apply to impose liability upon a non-existent entity following a merger into another company. Rather, as New York courts have uniformly recognized, the de facto corporation doctrine "has only been invoked by . . . courts to establish . . . liability against a successor corporation," (Holmberg v. Attractions Land Inc., 657 N.Y.S.2d 816, 818 (N.Y. App.

Div. 1997) (emphasis added)), when the merged corporation continues to function following the merger. Because Copeland no longer exists and because its successor, Citistreet Associates LLC, has been named as a defendant in this lawsuit, Plaintiff's motion for sanctions – just like his request for a default judgment – is baseless and should be denied accordingly.

III. AN AWARD OF COSTS AND ATTORNEYS' FEES TO DEFENDANTS IS "WARRANTED" UNDER RULE 11(c)(1)(A)

Rule 11(c)(1)(A) entitles a party prevailing on a motion for sanctions to recover its costs and attorneys' fees when the Court deems that such an award is "warranted." Thus, Rule 11(c)(1)(A) allows courts to exercise discretion to award a party opposing a motion for sanctions their costs and fees without the necessity of filing a cross-motion for sanctions. See Robinson v. City of San Bernardino Police Dep't, 992 F. Supp. 1198, 1208 (C.D. Cal. 1998). In Robinson, a case with far less egregious facts than this one, the court awarded Western Nutritional Services ("WNS"), the party defending against a motion for sanctions, its costs and fees incurred in opposing the plaintiff's motion. Id. at 1208. The plaintiff in Robinson challenged the reply WNS filed in further support of its motion for summary judgment. Id. The court based its award of costs and attorneys' fees to WNS on the fact that WNS' reply – the paper plaintiff challenged – was filed in support of a motion for summary judgment that the court ultimately determined was meritorious. Id. The court therefore concluded that "[t]here was no reason for plaintiff to seek sanctions against defendant WNS except to harass and to needlessly increase the costs of litigations." Id.

If there ever was a case for an award of costs and attorneys' fees under Rule 11(c)(A)(1) to a party defending against a motion for sanctions, this is that case. Even more so than Robinson, there exists absolutely no reason for Plaintiff to have filed a motion for sanctions "except to harass and to needlessly increase the costs of litigation" given that this is the fifth time Plaintiff has attempted to raise the very same issue of whether "Citistreet" and "Copeland Associates, Inc." are viable legal entities and given that these two entities have not defaulted. And, even more importantly, Plaintiff's latest attempt to raise this issue comes after the Court has already rejected Plaintiff's position as to the existence of these two entities, accused Plaintiff of "playing games," and specifically endorsed the filing by Defendants that Plaintiff is now attempting to challenge with sanctions. Given the amount of time and expense that Defendants have been forced to incur responding to the same issue time and time again, Plaintiff's motion should not only be denied, but Defendants should be awarded their costs and attorneys' fees incurred in defending against Plaintiff's patently frivolous motion.⁸

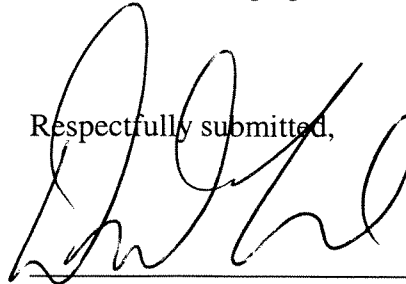
⁸ Defendants are also entitled to their attorneys' fees under 28 U.S.C. § 1927, which provides that, "Any attorney or person admitted to conduct cases in any court of the United States or any territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct."

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that Plaintiff's motion for sanctions be denied and that Defendants be awarded the amount of their reasonable costs and attorneys' fees incurred in defending against the motion.⁹

Dated: July 7, 2004

Respectfully submitted,



David Lender (DL-1554)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
Attorneys for Defendants
Citigroup Inc., Don Goldstein,
Citistreet LLC, Citistreet Associates LLC,
Citistreet Equities LLC,
Citistreet Financial Services LLC,
Travelers Insurance Company, Mayda Casado,
Jean Desjardins, Jim Wilson,
Salomon Smith Barney Inc.,
Smith Barney Corporate Trust Company,
Sanford I. Weill, State Street Corporation, and
David A. Spina

⁹ In responding to this motion, Defendants incurred \$22,075 in attorney fees. The attorney fees were incurred for reviewing Plaintiff's motion, researching the legal issues contained therein, and drafting Defendants' response. The fees are broken down as follows: \$16,575 for Peter Hageman, a fifth year associate for Weil, Gotshal & Manges LLP, who spent 39 hours at a rate of \$425 per hour, and \$5,500 for David Lender, a partner for Weil, Gotshal & Manges LLP, who spend 10 hours at a rate of \$550 per hour. Weil, Gotshal & Manges charged their customary rates for these services. See Lender Aff. ¶¶ 14-18.

EXHIBIT A TO OPPOSITION

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action File Number: CV-02-6492 (SJ) (VP)

----- X
:
:
CARMINE A. LoPRESTI, Individually, and in his
:
fiduciary capacity under the EMPLOYEE
:
RETIREMENT INCOME SECURITY ACT of
:
1974, under the Lutheran Medical Center § 403 (b)
:
Tax Sheltered Annuity Plan
:
:

Plaintiff,
:
:

- against -
:
:

CITIGROUP INC., WENDY Z. GOLDSTEIN,
:
MILES H. KUCKER, ALLEN SCHECHTER,
:
HOWARD SMITH, WILLIAM D. MHYRE, DON
:
GOLDSTEIN, STATE STREET CORPORATION,
:
CITISTREET, CITISTREET INCORPORATED,
:
CITISTREET, LLC, CITISTREET ASSOCIATES,
:
LLC, CITISTREET EQUITIES, LLC,
:
CITISTREET FINANCIAL SERVICES, LLC,
:
TRAVELRS INSURANCE COMPANY,
:
LUTHERAN MEDICAL CENTER, BUCK
:
CONSULTANTS, BUCK CONSULTANTS, INC.,
:
MAYDA CASADO, JEAN DESJARDINS, JIM
:
WILSON, SMITH BARNEY CORPORATE
:
TRUST COMPANY, SALOMON SMITH
:
BARNEY, INC., COPELAND ASSOCIATES,
:
INC., SANFORD I. WEILL and DAVID A.
:
SPINA, each and every defendant individually, and
:
in their fiduciary capacities, under the EMPLOYEE
:
RETIREMENT INCOME SECURITY ACT of
:
1974, under the Lutheran Medical Center § 403(b)
:
Tax Sheltered Annuity Plan
:
:

Defendants.
:
:
----- X

DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF
OPPOSITION TO PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT

(SJ)

(VP)

PRELIMINARY STATEMENT

Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney Inc., Smith Barney Corporate Trust Company, and Sanford I. Weill (collectively, the “Citigroup Defendants”) and State Street Corporation and David A. Spina (collectively, the “State Street Defendants”) respectfully submit this response to Plaintiff’s Motion for Default Judgment Against “Copeland Associates, Inc.” and “Citistreet.”

Plaintiff’s motion for default judgment is patently frivolous. Defendants’ counsel has explained to Plaintiff’s counsel on no less than *four* occasions that the correct name for “Citistreet” is “Citistreet LLC,” a named defendant in this action. Defendants’ counsel has also repeatedly explained that “Copeland Associates, Inc.” no longer exists because it merged into “Citistreet Associates LLC” in August 2000. Citistreet Associates LLC is also a named defendant. Nonetheless, Plaintiff adamantly refuses to remove these non-existent entities from the caption, and now seeks a default judgment against them. This type of harassment should not be countenanced and Plaintiff’s motion should be summarily denied. Defendants should also be awarded their costs and attorneys’ fees in having to respond to this motion.

ARGUMENT

I. PLAINTIFF IS NOT ENTITLED TO A DEFAULT JUDGMENT AGAINST CITISTREET OR COPELAND ASSOCIATES, INC.

A. Citistreet Does Not Exist Just As “Citistreet”

Plaintiff asserts that “Citistreet” exists based on a meaningless discussion about unauthenticated press releases which he claims demonstrate that “Citistreet” is a

cognizable legal entity. What Plaintiff's musings overlook is that there do exist Citistreet entities which Plaintiff has correctly named as defendants in his Second Amended Complaint -- Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, and Citistreet Financial Services LLC -- but *there is no cognizable legal entity* entitled just "Citistreet." See Affidavit of Robert Dughi ("Dughi Aff.") ¶ 3, Ex. A (certificate of formation of Citistreet LLC). In fact, it is "Citistreet LLC" -- not "Citistreet" -- which is the cognizable legal entity and limited liability company owned by Citigroup Inc. and State Street Corporation. Id. ¶ 2. It is for this reason, as Plaintiff himself has recognized (Grubel Aff. ¶ 27), that Mr. Robert Dughi accepted service in his capacity as President of Citistreet LLC and not "Citistreet." See Dughi Aff. ¶ 4. Defendant has repeatedly tried to explain this to Plaintiff's counsel, but to no avail. See Affidavit of David Lender ("Lender Aff."), Exs. 1-4.

B. Copeland Associates, Inc. No Longer Exists

Defendants have repeatedly informed Plaintiff's counsel that Copeland Associates, Inc. no longer exists because it merged into Citistreet Associates LLC in August of 2000.¹ See id. Citistreet Associates LLC is a named defendant in this action. Although Defendants provided Plaintiff with a copy of the filings made with the Delaware Secretary of State regarding Copeland, see id., Ex. 2, Plaintiff's latest motion conveniently omits this correspondence. These documents make abundantly clear that

¹ Whether or not Citistreet Associates LLC has continued to use Copeland checks, as Plaintiff contends (see Grubel Aff. ¶ 39), does not alter the fact that Copeland no longer exists as a legal cognizable entity.

Copeland Associates, Inc. is not a properly named defendant to this action – instead, its successor, defendant Citistreet Associates LLC, is the proper party.² See Dughi Aff. ¶ 6.

C. Plaintiff's Motion Is Baseless And Should Be Denied

Plaintiff clearly is not entitled to a default judgment against non-existent entities, especially where Plaintiff has otherwise named the proper defendants in this case. As Plaintiff must well know, business entities commonly refer to themselves in abbreviated fashion without specific reference to their particular corporate form.³ There is nothing improper or suspect about Citistreet LLC referring to itself as Citistreet. Nor has Plaintiff offered any evidence to dispute the fact that Copeland Associates, Inc. no longer exists. Plaintiff's motion is baseless and should be denied.⁴

Plaintiff concedes in his motion that, “[c]learly, if . . . CITISTREET and COPELAND ‘do not exist,’ [sic] their names should not be included in the caption” of

² Not surprisingly, Plaintiff also misapplies the “de facto” corporation doctrine in its attempt to improperly obtain a judgment against Copeland, a *non-existent entity*. Pl. Mem. of Law at 5. The de facto corporation doctrine does not apply to impose liability upon a non-existent entity following a merger into another company. Rather, as New York courts have uniformly recognized, the de facto corporation doctrine “has *only* been invoked by . . . courts to establish . . . liability against a *successor corporation*,” (*Holmberg v. Attractions Land Inc.*, 657 N.Y.S.2d 816, 818 (N.Y. App. Div. 1997)), when the merged corporation continues to function following the merger. Because Copeland no longer exists and because its successor, Citistreet Associates LLC, has been named as a defendant in this lawsuit, Plaintiff's request for a default judgment is baseless and should be denied accordingly.

³ For example, Weil, Gotshal & Manges LLP, the law firm representing the Citigroup and State Street Defendants, is commonly referred to as Weil, Gotshal. This, however, does not change the fact that Weil, Gotshal & Manges LLP is the proper legal entity.

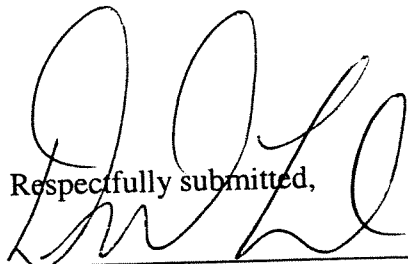
⁴ This is not the first time that Plaintiff has acted without any factual basis for doing so. In his Second Amended Complaint, Plaintiff named the Chairmen of both Citigroup and State Street as defendants, even though there is no evidence that either of them had any involvement in the events discussed in the Complaint.

the complaint and should not be named as defendants in this lawsuit. See Grubel Aff.
¶ 9. Because these entities do not exist, they should be removed from the caption in this case. Furthermore, Defendants should be awarded their costs and attorneys fees incurred in responding to this frivolous motion. See, e.g., Callahan v. Schoppe, 864 F.2d 44, 46 (5th Cir. 1989) (affirming an award of sanctions – including attorneys fees – arising from a suit filed against the wrong defendant which persisted after clear notice of the error).

CONCLUSION

For the foregoing reasons, the Citigroup Defendants and the State Street Defendants respectfully request that Plaintiff's motion for default judgment against Citistreet and Copeland Associates, Inc. be denied.

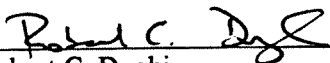
Dated: May 7, 2003

Respectfully submitted,


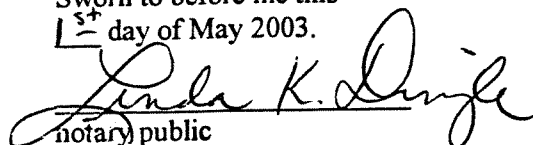
David Lender (DL-1554)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
Attorneys for Defendants
Citigroup Inc., Don Goldstein,
Citistreet LLC, Citistreet Associates LLC,
Citistreet Equities LLC, Citistreet Financial
Services LLC, Travelers Insurance Company,
Mayda Casado, Jean Desjardins, Jim Wilson,
Salomon Smith Barney Inc., Smith Barney
Corporate Trust Company, Sanford I. Weill,
State Street Corporation, and David A. Spina

ROBERT C. DUGHI, being duly sworn, deposes and says:

1. I am currently the President of Citistreet LLC and Chairman and Chief Executive Officer of Citistreet Associates LLC. In my capacity as President of Citistreet LLC and Chairman and Chief Executive Officer of Citistreet Associates LLC, I am familiar with and have personal knowledge of the facts described in this affidavit.
2. Citistreet LLC is a Delaware limited liability company, owned by Citigroup Inc. and State Street Corporation. A true and correct copy of Certificate of Formation of Citistreet LLC, dated March 31, 2000, is attached hereto as Exhibit A.
3. Although there do exist cognizable legal entities entitled Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC and Citistreet Financial Services LLC, there is no cognizable legal entity called just "Citistreet."
4. In my capacity as President of Citistreet LLC, I accepted service on behalf of Citistreet LLC, but not on behalf of "Citistreet," because "Citistreet" does not exist.
5. On February 25, 2000, Copeland Associates, Inc. changed its name to Copeland Associates LLC. A true and correct copy of the Certificate of Conversion is attached here as Exhibit B.
6. Thereafter, in August 2000, Copeland Associates LLC merged into Citistreet Associates LLC. A true and correct copy of the Certificate of Amendment, dated August 16, 2000, is attached hereto as Exhibit C. Copeland Associates LLC (which was formerly Copeland Associates, Inc.) therefore no longer exists.


Robert C. Dughi

Sworn to before me this
1st day of May 2003.


notary public

LINDA K. DINGLE
A Notary Public of New Jersey
My Commission Expires 6/17/2003
NY1:118281201PCNW011.DOC\77948.0010

SECRET

State of Delaware
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "CITISTREET LLC", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF MARCH, A.D. 2000, AT 6 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF FORMATION IS THE FIRST DAY OF APRIL, A.D. 2000.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

3205036 8100

001166380

AUTHENTICATION: 0354950

DATE: 03-31-00

**CERTIFICATE OF FORMATION
OF
CITISTREET LLC**

This Certificate of Formation is being executed as of March 31, 2000 for the purpose of forming a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq.

The undersigned, being duly authorized to execute and file this Certificate of Formation, does hereby certify as follows:

1. Name. The name of the limited liability company is CitiStreet LLC (the "Company").
2. Registered Office and Registered Agent. The Company's registered office in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The registered agent of the Company for service of process at such address is The Corporation Trust Company.
3. Effectiveness. This Certificate of Formation shall be effective as of 12:01 a.m. (eastern time zone) on April 1, 2000.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Formation as of the day and year first above written.

STATE STREET BANK AND TRUST COMPANY,
an Authorized Person

By: *Walter J. Snow*
Name: WALTER SNOW
Title: SVP

KEEPER HOLDINGS LLC,
an Authorized Person

By: PLAZA LLC,
Ernest J. Wrigat
Name: ERNEST J WRIGAT
Title: Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 06:00 PM 03/31/2000
001166380 - 3205036

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF "COPELAND ASSOCIATES, INC.", CHANGING ITS NAME FROM "COPELAND ASSOCIATES, INC." TO "COPELAND ASSOCIATES LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2000, AT 11:15 O'CLOCK A.M.

0825370 8100
001144178



Edward J. Freel
Edward J. Freel, Secretary of State 0396331

AUTHENTICATION: 03-22-00

DATE:

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:18 AM 02/25/2000
001094752 - 0625270

CERTIFICATE OF CONVERSION
OF
COPELAND ASSOCIATES, INC.
INTO
COPELAND ASSOCIATES LLC

Pursuant to Section 266 of the General Corporation Law
of the State of Delaware

FIRST: The name of the corporation is Copeland Associates, Inc.
(the "Corporation") and the jurisdiction of its incorporation is Delaware.

SECOND: The date of the Corporation's incorporation is June 8,
1976.

THIRD: The name of the limited liability company into which the
Corporation shall be converted is Copeland Associates LLC.

FOURTH: This conversion has been approved in accordance with the
provisions of Section 266 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate
of Conversion to be executed in its corporate name this 25th day of February,
2000.

COPELAND ASSOCIATES, INC.

By: Paul S. Feinberg
Name: Paul S. Feinberg
Title: Senior Vice President, General
Counsel and Secretary

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "COPELAND ASSOCIATES LLC", CHANGING ITS NAME FROM "COPELAND ASSOCIATES LLC" TO "CITISTREET ASSOCIATES LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF AUGUST, A.D. 2000, AT 3 O'CLOCK P.M.




Edward J. Freel, Secretary of State

0825370 8100

001416520

AUTHENTICATION: 0624354

DATE: 08-17-00

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF "COPELAND ASSOCIATES, INC.", CHANGING ITS NAME FROM "COPELAND ASSOCIATES, INC." TO "COPELAND ASSOCIATES LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2000, AT 11:15 O'CLOCK A.M.

0825370 8100

001144178



Edward J. Freel
Edward J. Freel, Secretary of State

AUTHENTICATION: 03-22-00

DATE:

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:13 AM 02/25/2000
001094752 - 0625270

CERTIFICATE OF CONVERSION
OF
COPELAND ASSOCIATES, INC.
INTO
COPELAND ASSOCIATES LLC

Pursuant to Section 266 of the General Corporation Law
of the State of Delaware

FIRST: The name of the corporation is Copeland Associates, Inc.
(the "Corporation") and the jurisdiction of its incorporation is Delaware.

SECOND: The date of the Corporation's incorporation is June 8,
1976.

THIRD: The name of the limited liability company into which the
Corporation shall be converted is Copeland Associates LLC.

FOURTH: This conversion has been approved in accordance with the
provisions of Section 266 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certifi-
cate of Conversion to be executed in its corporate name this 25th day of February,
2000.

COPELAND ASSOCIATES, INC.

By: Paul S. Feinberg
Name: Paul S. Feinberg
Title: Senior Vice President, General
Counsel and Secretary

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

Civil Action File Number: CV-02-6492 (SJ) (VP)

----- X
:
CARMINE A. LoPRESTI, Individually, and in his
fiduciary capacity under the EMPLOYEE
RETIREMENT INCOME SECURITY ACT of
1974, under the Lutheran Medical Center § 403 (b)
Tax Sheltered Annuity Plan
:

Plaintiff,
:

- against -
:

CITIGROUP INC., WENDY Z. GOLDSTEIN,
MILES H. KUCKER, ALLEN SCHECHTER,
HOWARD SMITH, WILLIAM D. MHYRE, DON
GOLDSTEIN, STATE STREET CORPORATION,
CITISTREET, CITISTREET INCORPORATED,
CITISTREET, LLC, CITISTREET ASSOCIATES,
LLC, CITISTREET EQUITIES, LLC,
CITISTREET FINANCIAL SERVICES, LLC,
TRAVELRS INSURANCE COMPANY,
LUTHERAN MEDICAL CENTER, BUCK
CONSULTANTS, BUCK CONSULTANTS, INC.,
MAYDA CASADO, JEAN DESJARDINS, JIM
WILSON, SMITH BARNEY CORPORATE
TRUST COMPANY, SALOMON SMITH
BARNEY, INC., COPELAND ASSOCIATES,
INC., SANFORD I. WEILL and DAVID A.
SPINA, each and every defendant individually, and
in their fiduciary capacities, under the EMPLOYEE
RETIREMENT INCOME SECURITY ACT of
1974, under the Lutheran Medical Center § 403(b)
Tax Sheltered Annuity Plan
:

Defendants.
:

AFFIDAVIT OF DAVID LENDER
(SJ)
(VP)

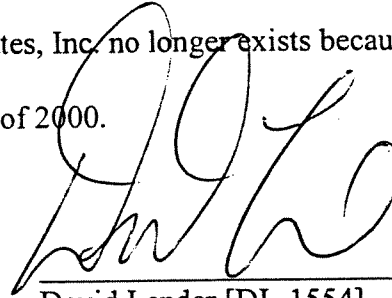
DAVID LENDER, being duly sworn, deposes and says:

1. I am an attorney at law of the State of New York and a member of the firm of Weil, Gotshal & Manges LLP. I am over the age of 21, and am fully competent to make this affidavit.

2. I represent Defendants Citigroup Inc., Don Goldstein, Citistreet LLC, Citistreet Associates LLC, Citistreet Equities LLC, Citistreet Financial Services LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, and Sanford I. Weill (collectively, the "Citigroup Defendants") and State Street Corporation and David A. Spina (collectively, the "State Street Defendants"). As an attorney for the Citigroup Defendants and the State Street Defendants, I am personally familiar with the facts described in this affidavit and, in particular, the correspondence by and between my firm and opposing counsel and the Court.

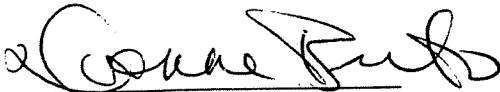
3. Attached hereto as Exhibits 1 through 4 to this affidavit are true and correct copies of letters that were sent to Plaintiff's counsel informing him that there is no entity called "Citistreet" and that Copeland Associates, Inc. no longer exists because it merged into Citistreet Associates LLC in August of 2000. Exhibits 1 through 4 were sent to opposing counsel on January 3, 2003, January 16, 2003, January 29, 2003 and February 4, 2003, respectively.

4. Attached to this affidavit as Exhibit 5 is a true and correct copy of the letter I sent to the Court on March 17, 2003, informing the Court that there is no entity called just "Citistreet" and that Copeland Associates, Inc. no longer exists because it merged into Citistreet Associates LLC in August of 2000.



David Lender [DL-1554]

Sworn to before me this
7th day of May 2003.



Notary Public

IVONNE BRITO
Notary Public State of
New York
No. 01BR4941935
Qualified in New York County
Commission Expires 09/06/2006

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE • NEW YORK, NY 10153-0119

(212) 310-8000

FAX: (212) 310-8007

DALLAS

HOUSTON

MENLO PARK
(BRICON VALLEY)

MIAMI

WASHINGTON, D.C.

BRUSSELS

BUDAPEST

FRANKFURT

LONDON

PRAGUE

WARSAW

WATERS DIRECT LINE

212-310-8505

peter.hageman@weil.com

January 3, 2003

BY FACSIMILE

Henry M. Grubel, Esq.
Henry M. Grubel, P.C.
37 Prospect Street
P.O. Box 628
Freeport, NY 11520

Re: Carmine A. LoPresti v. Citigroup, Inc., et al
Civil Action File No. Cv-02-6492

Dear Mr. Grubel:

Enclosed please find a stipulation with respect to the answer date for the defendants we are representing, consistent with what you discussed with David Lender. Please send the executed stipulation back to this office and we will see that it is filed with the Court.

In addition, as you discussed with David Lender, please amend the caption of the Complaint and the body of the Complaint in the above-referenced matter to accurately reflect the correct parties. Specifically, Citistreet, Citistreet, Inc. and Copeland Associates, Inc. do not exist; instead, the correct name of the Citistreet entity is Citistreet, LLC and Copeland Associates, Inc. merged into Citistreet Associates, LLC. In addition, because Smith Barney Corporate Trust Company is a cognizable legal entity, we ask that you delete the Complaint's reference to Solomon Smith Barney, Inc. Should you have any questions, please feel free to contact us. Thanks for your cooperation.

Cordially,



Peter Hageman

PH/vjr

Enclosure

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE • NEW YORK, NY 10153-0119

(212) 310-8000

FAX: (212) 310-8007

DALLAS
HOUSTON
MENLO PARK
(SILICON VALLEY)
MIAMI
WASHINGTON, D.C.

BRUSSELS
BUDAPEST
FRANKFURT
LONDON
PRAGUE
WARSAW

DAVID LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

January 16, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, New York 11520

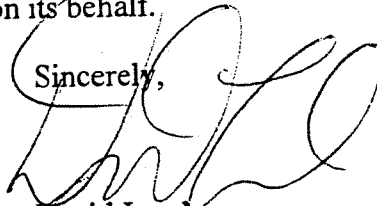
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

In response to your January 15, 2003 letter, please be advised once again that Copeland Associates Inc. no longer exists because it merged into Citistreet Associates LLC in August 2000. See attached. In addition, I have checked again, and can confirm that there is no entity called Citistreet, Inc. related to the Citistreet entities named in the Complaint. The document you sent me only indicates that some entity was incorporated as "Citistreet" in 1984 to conduct foreign business, and that the entity is inactive and was terminated. Therefore, I again request that you amend the caption to eliminate these non-existent companies.

Lastly, as I mentioned, Smith Barney Corporate Trust Company has authorized me to accept service on its behalf.

Sincerely,



David Lender

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF "COPELAND ASSOCIATES, INC.", CHANGING ITS NAME FROM "COPELAND ASSOCIATES, INC." TO "COPELAND ASSOCIATES LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2000, AT 11:15 O'CLOCK A.M.

0825370 8100
001144178



Edward J. Freel
Edward J. Freel, Secretary of State 0395331

AUTHENTICATION: 03-22-00

DATE:

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:19 AM 02/25/2000
001098752 - 0625370

CERTIFICATE OF CONVERSION
OF
COPELAND ASSOCIATES, INC.
INTO
COPELAND ASSOCIATES LLC

Pursuant to Section 266 of the General Corporation Law
of the State of Delaware

FIRST: The name of the corporation is Copeland Associates, Inc.
(the "Corporation") and the jurisdiction of its incorporation is Delaware.

SECOND: The date of the Corporation's incorporation is June 8,
1976.

THIRD: The name of the limited liability company into which the
Corporation shall be converted is Copeland Associates LLC.

FOURTH: This conversion has been approved in accordance with the
provisions of Section 266 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certifi-
cate of Conversion to be executed in its corporate name this 25th day of February,
2000.

COPELAND ASSOCIATES, INC.

By: Paul S. Feinberg
Name: Paul S. Feinberg
Title: Senior Vice President, General
Counsel and Secretary

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "COPELAND ASSOCIATES LLC", CHANGING ITS NAME FROM "COPELAND ASSOCIATES LLC" TO "CITISTREET ASSOCIATES LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF AUGUST, A.D. 2000, AT 3 O'CLOCK P.M.




Edward J. Freel, Secretary of State

0825970 8100

001416520

AUTHENTICATION: 0624354

DATE: 08-17-00

CERTIFICATE OF AMENDMENT

OF

Copeland Associates LLC

1. The name of the limited liability company is Copeland Associates LLC.
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

"The name of the limited liability company is CitlStreet Associates LLC."

3. This Certificate of Amendment shall be effective on August 16, 2000.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Copeland Associates LLC this 16th day of August, 2000.

Paul S. Feinberg

Paul S. Feinberg

Senior Vice President/Manager

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8704
pierre.davis@weil.com

January 29, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, NY 11520

Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grumbel:

This is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet. As set forth in our letter of January 16, 2003, Copeland no longer exists because it merged into Citistreet Associates, LLC in August 2000. Further, "Citistreet" is not and has never been a legal entity. It is, therefore, not necessary that you provide a waiver of service and summons with respect to these parties.

Again, we request that you amend the caption and the complaint to eliminate those non-existent companies. Thanks for your attention to this matter.

Cordially,



Peter Hageman

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153

(212) 310-8000

FAX: (212) 310-8007

BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8704
david.lender@weil.com

February 4, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, NY 11520

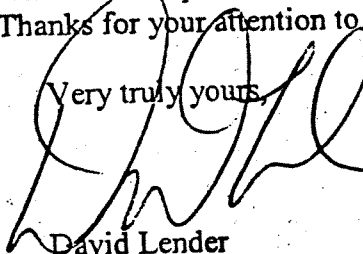
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

This is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet. As set forth in our letter of January 16, 2003, Copeland no longer exists because it merged into Citistreet Associates, LLC in August 2000. Further, "Citistreet" is not a legal entity. It is, therefore, not necessary that you provide a waiver of service and summons with respect to these parties.

Again, we request that you amend the caption and the complaint to eliminate those non-existent companies. Thanks for your attention to this matter.

Very truly yours,



David Lender

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8505
peter.hageman@weil.com

March 17, 2003

BY MAIL

James Giokas
Chief Deputy Clerk
US District Court for the
Eastern District of New York
Brooklyn Division
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **No. - CV -02 - 6492 LoPresti v.
Citigroup, Inc. et al.**

Dear Mr. Giokas:

This letter is written in response to Plaintiff's request for the clerk of the Court to enter a default judgment against "Citistreet" and "Copeland Associates, Inc." This law firm represents Defendants Citigroup, Inc., Don Goldstein, Citistreet LLC, Citistreet Associates, LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Salomon Smith Barney, Inc., Smith Barney Corporate Trust Company, and Sanford I. Weill (collectively, the "Citigroup Defendants") and State Street Corporation and David A. Spina (collectively, the "State Street Defendants").

Previously, we filed Joint Stipulations on behalf of the Citigroup Defendants and the State Street Defendants extending their time to answer Plaintiff's first and second amended complaints, respectively. The current stipulation requires the Citigroup Defendants and the State Street Defendants to answer or otherwise move against Plaintiff's Second Amended Complaint by March 28, 2003. The stipulation, however, was not filed on behalf of "Citigroup" and "Copeland Associates Inc." because there exist no such entity or entities so named nor titled. Quite simply, "Citigroup" and "Copeland Associates, Inc." do not exist.

WEIL, GOTSHAL & MANGES LLP

James Giokas
March 17, 2003
Page 2

In particular, as this law firm informed counsel for Plaintiff in letters of January 16, 2003 and February 4, 2003, "Copeland Associates, Inc." no longer exists because it merged into Citistreet Associates LLC in August of 2000. See Exhibits "A". Citistreet Associates LLC is a named defendant in this case. Further, though there exist entities with the word "Citistreet" in their title on whose behalf this law firm filed the above referenced stipulations (e.g. Citistreet LLC, Citistreet Associates LLC, Citistreet Financial Services LLC and Citistreet Equities LLC), there is *not* a cognizable legal entity entitled "Citistreet."

Accordingly, in order to avoid the possibility of confusion and any prejudice to our clients, we ask that Plaintiff's request that the Clerk of the Court enter a default judgment against two non-existent entities be denied and that the caption of Plaintiff's Second Amended Complaint be amended to accurately reflect the correct names of the cognizable legal entities named in this lawsuit as we have repeatedly requested Plaintiff to do.

Thank you for your attention to this matter.

Very truly yours,

David Lender w/ permission

David J. Lender

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE • NEW YORK, NY 10153-0119

(212) 310-8000

FAX: (212) 310-8007

DALLAS
HOUSTON
MENLO PARK
(SILICON VALLEY)
MIAMI
WASHINGTON, D.C.

BRUSSELS
BUDAPEST
FRANKFURT
LONDON
PRAGUE
WARSAW

DAVID LENDER
DIRECT LINE (212) 310-8153
E-MAIL: david.lender@weil.com

January 16, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, New York 11520

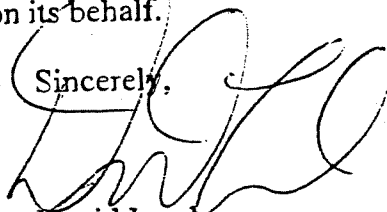
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

In response to your January 15, 2003 letter, please be advised once again that Copeland Associates Inc. no longer exists because it merged into Citistreet Associates LLC in August 2000. See attached. In addition, I have checked again, and can confirm that there is no entity called Citistreet, Inc. related to the Citistreet entities named in the Complaint. The document you sent me only indicates that some entity was incorporated as "Citistreet" in 1984 to conduct foreign business, and that the entity is inactive and was terminated. Therefore, I again request that you amend the caption to eliminate these non-existent companies.

Lastly, as I mentioned, Smith Barney Corporate Trust Company has authorized me to accept service on its behalf.

Sincerely,



David Lender

Exhibit A

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CONVERSION OF "COPELAND ASSOCIATES, INC.", CHANGING ITS NAME FROM "COPELAND ASSOCIATES, INC." TO "COPELAND ASSOCIATES LLC", FILED IN THIS OFFICE ON THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2000, AT 11:15 O'CLOCK A.M.

0625370 8100
001144178



Edward J. Freel
Edward J. Freel, Secretary of State 03-22-00

AUTHENTICATION: 03-22-00

DATE:

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 11:19 AM 02/25/2000
001094752 - 0623270

CERTIFICATE OF CONVERSION
OF
COPELAND ASSOCIATES, INC.
INTO
COPELAND ASSOCIATES LLC

Pursuant to Section 266 of the General Corporation Law
of the State of Delaware

FIRST: The name of the corporation is Copeland Associates, Inc.
(the "Corporation") and the jurisdiction of its incorporation is Delaware.

SECOND: The date of the Corporation's incorporation is June 8,
1976.

THIRD: The name of the limited liability company into which the
Corporation shall be converted is Copeland Associates LLC.

FOURTH: This conversion has been approved in accordance with the
provisions of Section 266 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certifi-
cate of Conversion to be executed in its corporate name this 25th day of February,
2000.

COPELAND ASSOCIATES, INC.

By: Paul S. Feinberg
Name: Paul S. Feinberg
Title: Senior Vice President, General
Counsel and Secretary

State of Delaware
Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "COPELAND ASSOCIATES LLC", CHANGING ITS NAME FROM "COPELAND ASSOCIATES LLC" TO "CITISTREET ASSOCIATES LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF AUGUST, A.D. 2000, AT 3 O'CLOCK P.M.



Edward J. Freel

Edward J. Freel, Secretary of State

0825970 2100

001416520

AUTHENTICATION: 0624394

DATE: 08-17-00

CERTIFICATE OF AMENDMENT

OF

Copeland Associates LLC

1. The name of the limited liability company is Copeland Associates LLC.
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

"The name of the limited liability company is CH1Street Associates LLC."

3. This Certificate of Amendment shall be effective on August 16, 2000.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Copeland Associates LLC this 16th day of August, 2000.

Paul S. Feinberg

Paul S. Feinberg

Senior Vice President/Manager

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8704
pierre.davis@weil.com

January 29, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, NY 11520


Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grumbel:

This is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet. As set forth in our letter of January 16, 2003, Copeland no longer exists because it merged into Citistreet Associates, LLC in August 2000. Further, "Citistreet" is not and has never been a legal entity. It is, therefore, not necessary that you provide a waiver of service and summons with respect to these parties.

Again, we request that you amend the caption and the complaint to eliminate those non-existent companies. Thanks for your attention to this matter.

Cordially,


Peter Hageman

WEIL, GOTSHAL & MANGES LLP

767 FIFTH AVENUE
NEW YORK, NY 10153
(212) 310-8000
FAX: (212) 310-8007

BRUSSELS
BUDAPEST
DALLAS
FRANKFURT
HOUSTON
LONDON
MIAMI
PRAGUE
SILICON VALLEY
SINGAPORE
WARSAW
WASHINGTON, D.C.

WRITER'S DIRECT LINE
212-310-8704
david.lender@weil.com

February 4, 2003

BY FACSIMILE

Henry M. Grubel
HENRY M. GRUBEL, P.C.
37 Prospect Street
Freeport, NY 11520

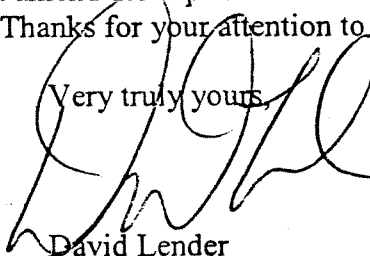
Re: LoPresti v. Citigroup, Inc., et al

Dear Mr. Grubel:

This is to verify that the following legal entities do not exist: Copeland Associates, Inc. and Citistreet. As set forth in our letter of January 16, 2003, Copeland no longer exists because it merged into Citistreet Associates, LLC in August 2000. Further, "Citistreet" is not a legal entity. It is, therefore, not necessary that you provide a waiver of service and summons with respect to these parties.

Again, we request that you amend the caption and the complaint to eliminate those non-existent companies. Thanks for your attention to this matter.

Very truly yours,



David Lender

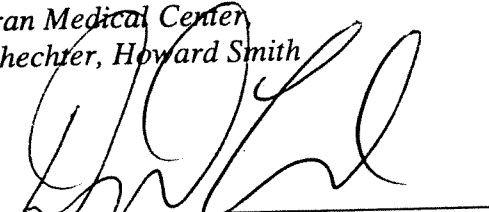
CERTIFICATE OF SERVICE

I, DAVID LENDER, hereby certify that on May 8, 2003 the foregoing **Defendants' Memorandum of Law in Support of Opposition to Plaintiff's Motion for Default Judgment, the Affidavit of Robert C. Dughi and the Affidavit of David Lender** were served by Federal Express, overnight delivery, upon the parties set forth below:

Henry M. Grubel, Esq. (HG-3211)
HENRY M. GRUBEL, P.C.
37 Prospect Street
P.O. Box 628
Freeport, New York 11520
(516) 623-4130
(516) 623-1989 (facsimile)
Attorney for Plaintiff

Kimberly S. Penner, Esq. (KP-1763)
SEDGWICK, DETERT, MORAN & ARNOLD LLP
125 Broad Street, 39th Floor
New York, New York 10004
(212) 422-0202
(212) 422-0925 (facsimile)
Attorneys for Defendants Buck Consultants and Buck Consultants Inc.

Michael H. Ference, Esq. (MF-7600)
SICHENZIA ROSS FRIEDMAN FERENCE LLP
1065 Ave. of the Americas, 21st Floor
New York, New York 10018
(212) 930-9700
(212) 930-9725 (facsimile)
*Attorneys for Defendants Wendy Z. Goldstein,
Miles H. Kucker, Lutheran Medical Center,
William D. Myhre, Allen Schechter, Howard Smith*



David J. Lender (DL-1554)

Dated: New York, New York
May 8, 2003