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December 13, 2004

Hon. Sterling Johnson, Jr.,
United States District Court Judge,
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: LOPRESTI v. CITIGROUP, et.al.
CV-02-6492 (SJ) (VVP)

Dear Judge Johnson:

I represent the plaintiff in this action.

Plaintiff respectfully appeals to your honor and requests that you rescind a certain order of the magistrate judge issued on November 30, 2004. Said order directed that a hearing be held on plaintiff's motion for sanctions under Rule 11 against Weil Gotshal & Manges, attorneys for the CITIGROUP defendants herein.

Both the limited focus and purpose of the Rule 11 hearing, and the ordered ground rules thereof, are extremely biased and prejudicial to the plaintiff. The magistrate judge and Weil Gotshal are pressuring plaintiff to appear at the hearing.

Under the ground rules established by the magistrate judge he is convening a Kangaroo Court in favor of Weil Gotshal and against plaintiff.

In the alternative, if the ordered hearing and its ground rules are not rescinded, and if a new magistrate judge is not assigned, then plaintiff requests that he be permitted to withdraw his pending Rule 11 motion, without prejudice.

You assigned plaintiff's motions for default judgments against CITISTREET and COPELAND ASSOCIATES, Inc. to the magistrate judge, per your order dated October 26, 2004.

You also assigned plaintiff's motion for Rule 11 sanctions against Weil Gotshal and Manges to the magistrate judge for a report and recommendation.

1. Your order dated October 26, 2004 established the issue that would be dispositive of plaintiff's motion for sanctions under Rule 11 as follows:

Because the Motions regarding sanctions under Rule 11 are grounded in issues of the existence or non-existence of Defendants Citistreet and Copeland Associates, Inc, and in Defendants Copeland Associates, Inc. and Citigroup's degree of awareness of their existence or non-existence----

2. Your October 26, 2004 order also went on to state:

Because Magistrate Judge Pohorelsky is already conducting discovery regarding the existence of these defendants in response to plaintiff's motions for default judgment, this Court ORDERS that plaintiff's motion for sanctions under rule 11 also be referred to Magistrate Judge Pohorelsky for report and recommendation. NOTE: (Plaintiff is unaware of any discovery, regarding the existence of these defendants ever having taken place, or being conducted by the magistrate judge.)

3. In a recent order by the magistrate judge dated November 10, 2004, it was directed that counsel appear on November 30, 2004 to attend a scheduling conference on these matters.

4. All counsel, except for counsel representing LUTHERAN MEDICAL CENTER and its named employees, appeared at the ordered November 30, 2004 scheduling conference.

5. The magistrate judge stated that all parties may appeal his rulings within 10 (ten) days of receiving the transcript of the subject proceedings, which he would supply to us via ECF service. On December 7, 2004, I was told by his chambers that we would have the transcript by the end of that week.

6. It is now 10:00am Monday, December 13, 2004 and no transcript has been posted by ECF. Accordingly, the statements herein contained about what transpired at the November 30, 2004 scheduling conference proceeding are from my memory and my notes. Plaintiff is unable to have a record on which to appeal the rulings. Weil Gotshal and the magistrate judge are pressuring plaintiff to attend a hearing that would make it impossible for plaintiff to assert his right to obtain a hearing on a level playing field, before an impartial court.

7. The magistrate judge said he would hold a hearing on plaintiff's motion for sanctions. Sanctions are being sought by plaintiff *inter alia*, for the refusal of Weil Gotshal to admit that overwhelming proof exists to show that CITISTREET is a joint venture co-owned by CITIGROUP, Inc. and STATE STREET CORPORATION.

8. According to your order the primary issue to be determined is whether CITISTREET is a Joint Venture and whether COPELAND ASSOCIATES, Inc. is a de facto corporation and the knowledge of CITIGROUP concerning these issues. Weil Gotshal claims that CITISTREET and COPELAND ASSOCIATES, Inc. are non existent entities of any sort.

9. Weil Gotshal is also arguing that CITISTREET is not a joint venture. They argue that CITISTREET is really CITISTREET LLC., which is a party to this case, for whom they have already appeared.

10. Weil Gotshal argues vigorously and incorrectly, that a business entity can be both a Joint Venture and a Limited Liability Company at the same time.

11. The magistrate judge gave us some of his available dates in January to hold the hearing on these issues. Asking that he be advised as to what date we can agree upon. I have not agreed to any date for the hearing because of the fact that the hearing will be a charade to find sanctions against me and will not focus on the issues presented in your order.

THE RULE 11 HEARING GROUND RULES

12. My recollection of the ground rules which the magistrate judge mandated at the November 30, 2004 proceeding, for the Rule 11 hearing he proposes to hold on plaintiff's motion for sanctions against Weil Gotshal are as follows:

- Plaintiff will be unable to present any direct affirmative proof whatsoever, in support of his motion for sanctions at the Rule 11 hearing.
- The magistrate judge will allow only one witness to testify at the hearing.
- The sole witness who will be allowed to testify is to be a Mr. Robert Dughi.
- Mr. Dughi is biased. He is the CEO of CITISTREET LLC. He swore an affidavit for Weil Gotshal & Manges in opposition to plaintiff motion for sanctions.
- Plaintiff will be prohibited from subpoenaing any documents into the hearing.

- Plaintiff will be prohibited from issuing any witness subpoenas for the hearing.
- Plaintiff may not issue a subpoena to have the attorney from Kelley, Drye & Warren LLP testify. He has asserted as part of his bio, that he represented STATE STREET in the formation of the Joint Venture called CITISTREET between STATE STREET and CITIGROUP.
- Plaintiff may not call any witnesses on his behalf.
- Plaintiff was merely given leave to cross examine defendant's Mr. Dughi.
- The hearing will be limited in time to three(3) hours.
- According to the magistrate judge, the stated purpose for calling Mr. Dughi as the sole witness, is to determine if Weil Gotshal had a reasonable basis for asserting to the court that CITISTREET and COPELAND ASSOCIATES, Inc. are existing entities. This is a clearly prejudicial ruling and is not the measure by which a Rule 11 motion is to be determined, under the circumstances of this case.
- Accordingly, under these circumstances, a decision by the magistrate judge in favor of Weil Gotshal, is preordained to be in their favor, and it appears to me that he has indicated that he will impose costs and sanctions against me, as requested by Weil Gotshal as measured by the astronomical fees that they say they are charging.
- No direct proof will be allowed to be introduced by plaintiff as to the existence of CITISTREET or COPELAND ASSOCIATES, Inc.
- Further, it seems to me that the magistrate judge deems the issue of whether CITISTREET or COPELAND ASSOCIATES, Inc. actually exist, is irrelevant to his inquiry.
- Your order to have the magistrate judge hear and report on the central core questions, of whether there is a Joint Venture called CITISTREET, and whether COPELAND ASSOCIATES, Inc. is a business entity of any sort are being ignored by the magistrate judge.

13. Plaintiff respectfully requests that you reject and rescind the discriminatory, biased and prejudicial ground rules the magistrate judge established for this hearing. They violate plaintiff's rights in so many respects. They are totally in favor

of Weil Gotshal, and against the plaintiff and myself.

14. Plaintiff respectfully requests that you assign a new magistrate judge to this case, due to his past demonstrated bias and prejudice against plaintiff, and the refusal of this magistrate judge to provide plaintiff with an unbiased court and a level playing field to present his evidence in support of his Rule 11 motion, as it was assigned to him by your order.

15. Further, at the November 30, 2004 scheduling conference, the magistrate judge issued summary denials of plaintiff's motion for default judgments and to have the Clerk note the defaults of CITISTREET and COPELAND ASSOCIATES, Inc. He did this without taking any proof on the issues whatsoever. These decisions are dispositive and will be appealed by plaintiff to your honor for a de novo review and appeal, within the time allowed therefore by the Federal Rules, after we get the transcript. There is also authority for the holding that sanctions under Rule 11 are also treated as being dispositive.

16. The magistrate judge continues demonstrating his bias and prejudice against plaintiff, and in favor of the defendants by denying plaintiff his rights under FRCP 1, to a '--JUST, SPEEDY, and INEXPENSIVE determination --' of his action. He also is going contrary to your 10/26/04 order.

17. In my opinion, based upon the foregoing, the magistrate judge has stacked the deck against the plaintiff and myself, to hold the hearing on plaintiff's motion for sanctions against Weil Gotshal, whose outcome is preordained in favor of Weil Gotshal.

18. The refusal to allow plaintiff to present affirmative proof and deny him subpoena power is at best unjust, and at worst convenes a Court partial to Weil Gotshal. It ill befits the spirit and dictates of the Federal Rules in every respect.

19. Appeal of these rulings to your honor is a must at this time because Weil Gotshal and the magistrate is pressuring me, as seen in his memorandum dated December 6, 2004, to set a firm date for this hearing as soon as possible in January 2005, without giving the plaintiff his statutory right to appeal his rulings.

20. The Magistrate's ruling that he will not take any proof from the plaintiff or me at the hearing, shows that he is not impartial. He has prejudged the matter against my client and myself, all in violation of Canons 1, 2 & 3 of the Model Code of Judicial Conduct, all to plaintiff's and my extreme prejudice. It is improper in every respect and requires your attention.

21. Unless plaintiff can obtain a full and fair hearing, regarding the existence or non existence of the Joint Venture known as CITISTREET and the corporate status of COPELAND ASSOCIATES, Inc., before an impartial court with a level playing

field, plaintiff requests that you allow him to withdraw his motion for sanctions without prejudice.

22. The magistrate judge is convening a 'hearing' that violates the spirit and essence of your orders dated 10/26/04, and the Federal Rules.

WHEREFORE, for the reasons hereinabove stated plaintiff respectfully requests that you rescind the terms and conditions of the hearing that were imposed by the magistrate judge, and that you assign a new magistrate judge to this matter. In the alternative, plaintiff requests your permission to withdraw his motion for sanctions, without prejudice.

Respectfully,

/s

Henry M. Grubel

Cc: Hon. U.S. Magistrate Judge Viktor V. Pohorelsky
David Covey, Esq.
Michael Ference, Esq.
David Lender, Esq.