

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARMINE A. LOPRESTI,

Plaintiff,

02 CV 6492 (SJ)

- against -

MEMORANDUM
AND ORDER

CITIGROUP, INC., WENDY Z. GOLDSTEIN,
MILES H. KUCKER, ALLEN SCHECHTER,
HOWARD SMITH, WILLIAM D. MYHRE,
DON GOLDSTEIN, STATE STREET CORP.,
CITISTREET, CITISTREET INC., CITISTREET
ASSOCIATES LLC, CITISTREET EQUITIES,
LLC, CITISTREET FINANCIAL SERVICES,
LLC, TRAVELERS INSURANCE COMPANY,
LUTHERAN MEDICAL CENTER, BUCK
CONSULTANTS, BUCK CONSULTANTS, INC.,
MAYDA CASADO, JEAN DESJARDINS, JIM
WILSON, SMITH BARNEY CORPORATE TRUST
COMPANY. COPELAND ASSOCIATES, INC.,
DAVID A. SPINA. SANFORD I. WEILL,
SALOMON SMITH BARNEY, INC.,
CITISTREET LLC

Defendants.

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A P P E A R A N C E S:

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LLC, Citistreet Equities, LLC, Citistreet Financial Services, LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Smith Barney Corporate Trust Company, David A. Spina, Sanford I. Weill, Salomon Smith Barney, Inc., Citistreet LLC

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JOHNSON, Senior District Judge:

Plaintiff Carmine LoPresti ("Plaintiff") brings this action against Defendants
Citigroup, Inc., Don Goldstein, Citistreet Associates, LLC, Citistreet Equities, LLC,

Citistreet Financial Services, LLC, Travelers Insurance Company, Mayda Casado, Jean Desjardins, Jim Wilson, Smith Barney Corporate Trust Company, Sanford I. Weill, Salomon Smith Barney, Inc., Citistreet LLC (collectively, the "Citigroup Defendants"), Defendants State Street Corporation and David A. Spina (collectively, the "State Street Defendants"), and Defendants Wendy Z. Goldstein, Miles H. Kucker, Allen Schechter, Howard Smith, William D. Myhre, Lutheran Medical Center, and Buck Consultants.

On March 13, 2003 Plaintiff filed a request that the Clerk of Court for the Eastern District of New York enter default judgments as to the Defendants Citistreet and Copeland Associates, Inc. due to these Defendants' failure to answer or appear. On March 17, 2003 the Citigroup Defendants and State Street Defendants responded to Plaintiff's request, alleging that Defendants Citistreet and Copeland Associates, Inc. do not exist, in the case of Copeland Associates because it merged into Citistreet Associates LLC, and in the case of Citistreet because there is no cognizable legal entity entitled "Citistreet." This Court referred Plaintiff's request for an entry of default judgment to Magistrate Judge Viktor Pohorelsky on April 23, 2003.

On May 22, 2003 Plaintiff filed a Motion for Default Judgment as to Defendants Citistreet and Copeland Associates, Inc. On April 29, 2004 Plaintiff filed an additional request with the Clerk of Court that he enter a default judgment against Defendants Citistreet and Copeland Associates, Inc. On May 5, 2004 Plaintiff sent yet another letter to the Clerk of Court requesting that the default of Defendants Citistreet and Copeland Associates be noted on the docket.

On July 7, 2003 Magistrate Judge Pohorelsky held a hearing regarding Plaintiff's Default Motion, and determined that discovery was required in order to resolve the question of the existence or non-existence of the allegedly defaulting Defendants.

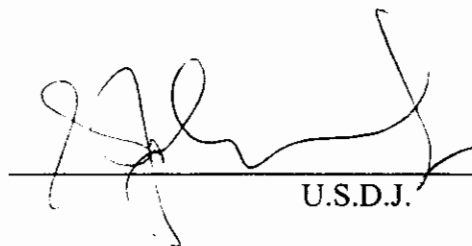
The Clerk of Court issued a letter to Plaintiff on May 7, 2004 informing him that the Clerk had considered Plaintiff's request for an entry of default judgment and that having reviewed the facts of the case the Clerk did not believe that entry of a Rule 55(a) notation of default was appropriate.

On July 2, 2004 Plaintiff applied to the Second Circuit for a writ of mandamus to compel the Clerk of the Court to enter a notation of the default of Citistreet and Copeland Associates, Inc. on the docket of the Court, or in the alternative a writ of prohibition to prevent the Clerk from refusing to note the default. The Second Circuit denied Plaintiff's petition for a writ of mandamus or a writ of prohibition on September 2, 2004, stating that Plaintiff must seek relief from the Magistrate Judge or District Court Judge assigned to the case.

As this Court has previously referred the matter of the entry of default judgments in this case to Magistrate Judge Pohorelsky, it is hereby ORDERED that Plaintiff's request to compel the Clerk of Court to enter a notice of default on the docket is referred to Magistrate Judge Pohorelsky for report and recommendation.

SO ORDERED.

Dated: October 26, 2004
Brooklyn, New York


U.S.D.J.