

The Weil affidavit does not deny the core reality of the existence of the bias against me, or the existence of the bias in their favor, by the Magistrate Judge.

Weil's failure to deny my allegations of bias and prejudice, and Weil's failure to submit an affidavit from Mr. Obermaier, operate as admissions in my favor on this motion.

The Weil affidavit protests my failure to allege any 'significant contact' between Mr. Obermaier and Magistrate Judge Pohorelsky, in my affidavit of bias. Weil fails to define the phrase 'significant contact'.

I concede that I do not have any sort of surveillance films, wiretaps, transcripts of conversations, phone records, phone logs, emails, or investigative reports, by and between Mr. Obermaier, the Weil firm, the Court and the Magistrate Judge that could form the basis of whatever 'significant contact' means.

Under these circumstances, if a hearing is requested by Weil on these issues, it would be an endless hall of mirrors with, the Magistrate Judge, Weil employees, Court personnel, their friends and family as witnesses.

This is why the mere appearance of impropriety, which I have clearly demonstrated herein and in my moving affidavit of bias and prejudice, is a basis for recusal.

Weil's failure to deny the existence of the apparent

influence it has with the Court, speaks volumes in my favor. It supports my motion, and lends great credence to the fact that it should be granted. Facts not denied are admissions.

The Weil firm has gone to great lengths in opposing my challenge to their assertions, that CITISTREET and COPELAND ASSOCIATES, INC. are non cognizable and non existent entities of any sort.

If, in fact, CITISTREET and COPELAND did not exist, there would have been no need for Weil to protest their alleged non-existence so adamantly, and with such persistence, for a default judgment against non existent defendants would be meaningless.

The Weil firm refuses to accept the reality of the documented facts that COPELAND ASSOCIATES, INC. was writing checks years after it was dissolved, making it a de facto corporation; and that CITISTREET clearly exists, pursuant to its very own, and very large website at www.cititstreetonline.com.; the checks it writes in its own name (under the identical bank account number as COPELAND'S); and as set forth in my second amended complaint in this action.

As more fully detailed in my pending, but as yet unfiled motion under Rule 11 (because it has not been fully briefed), CITISTREET states on its website that it is a 50/50 joint venture co-owned by CITIGROUP, INC. and STATE STREET CORPORATION; that it has \$190 billion under management; over 9 million plan

participants; employ's 3,000 people and has offices world wide.

The CITISTREET website does not contain any disclaimers. CITISTREET does not say that it does not exist, or that the joint venture known as CITISTREET is really CITISTREET LLC, despite all of the Weil firm's prior filings herein to the contrary. There are major differences between a joint venture and a limited liability company. One is not to be confused with the other.

There are two separate entities, one is CITISTREET the joint venture, and the other is CITISTREET LLC. Both were formed at the same time, but they are each separate organizations. The attempts by Weil to confuse the issue by saying they are one and the same entity, are false and misleading.

I can only speculate as to why Weil insists on maintaining that CITISTREET does not exist, and is merely a service mark.

As to the timeliness of my motion to disqualify the Magistrate Judge, neither the Magistrate Judge nor the Weil firm ever revealed to me or to my attorney the extrajudicial connection between Mr. Obermaier and the Magistrate Judge.

I made this motion as soon as I learned about the extrajudicial relationship that the Weil firm enjoys with the Magistrate Judge. I could not have brought this motion until I became aware of the basis for the bias of the Magistrate Judge.

As biased and prejudicial as the statements of the

Magistrate Judge were, against me at the July 7, 2003 proceeding, and in Weil's favor, I do not believe that they alone would have been a sufficient basis for disqualification. At the time I was unaware of the existence of an extrajudicial basis for the bias and prejudice of the Magistrate Judge against me, and in favor of the defaulted defendants, CITISTREET and COPELAND ASSOCIATES, Inc., so I could not have brought this motion at that time.

This motion could not have been properly brought any sooner.

The Weil affidavit also fails to challenge or deny the fact that the Magistrate Judge's statements were prejudicial and biased against me, and prejudiced in their favor.

The Weil affidavit also contains an apparently deceptive misstatement of fact. In footnote #2 on page five, as continued on page six it states that Magistrate Judge Pohorelsky has '--- already presided over the motion for default judgment.' I do not know when this is supposed to have happened. Clearly it was not at the thirty minute proceeding held on July 7, 2003, despite the erroneous docket entry by the Clerk of the Court in regard thereto, wherein he entered that the proceeding was a hearing, and that all sides were present. Wrong on both counts.

With regard to my lawyer's letter dated May 5, 2003, to the Magistrate Judge to disqualify himself due to his prior relationship with Ping Moy, Esq., the Vice President and General Counsel of a lead defendant herein, Lutheran Medical Center, it

must be noted that the letter was not a motion. It was merely a letter, written at the suggestion of the Magistrate's law clerk. It was not accompanied by a memorandum of law, notice of motion, or affidavit in support. In the last sentence of his letter my lawyer clearly reserved my right to bring this motion by stating:

This letter is written without prejudice to plaintiff's making a formal motion for your recusal hereafter as the case may be. (See Exhibit 'A' annexed hereto).


The hearing that the Magistrate Judge had ordered to be held regarding the plaintiff's motion for a default judgment has never taken place. I believe this is part of the plan by the Weil firm and the Magistrate Judge to have the defaults of these defendants mooted by the Court, if the Judge grants their pending motion under F.R.C.P. 12(b)(6).

The Weil firm has never appeared on behalf of CITISTREET and COPELAND ASSOCIATES, INC., yet, over the objections of my attorney, the Magistrate Judge allowed the Weil firm to represent CITISTREET and COPELAND ASSOCIATES, INC. without appearing on their behalf. In my opinion this is a further indication of the bias and prejudice of the Magistrate Judge has against me, and in favor of the Weil firm.

At the July 7, 2003 proceeding the Magistrate Judge failed to question Weil about the legal basis of having a F.R.C.P. 12(b)(6) dismissal inure to the benefit of defendants who have deliberately defaulted herein.

For the reasons herein stated and for the reasons stated in my previously submitted, moving affidavit of bias and prejudice, I respectfully request that Magistrate Judge Pohorelsky recuse himself forthwith, from being the Magistrate Judge in this matter, and from having any further connection with the case whatsoever.

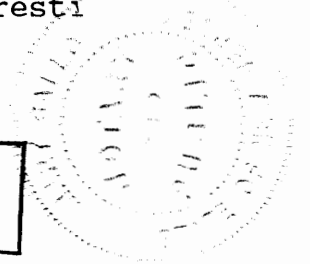
Subscribed and sworn to
this 7th day of July 2004.


Carmine A. LoPresti

SUBSCRIBED and SWORN TO BEFORE ME
THIS 7th DAY OF JULY 2004



MARY GALLO
Notary Public - New Jersey
My Commission Expires May 10, 2009
Honorable County

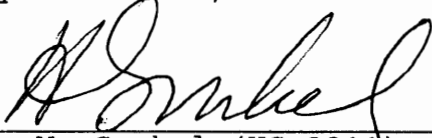


CERTIFICATE OF COUNSEL

As required by the provisions of Section 144 of Title 28 of the United States Code, I, as counsel of record for Carmine A. LoPresti, certify that this reply affidavit is submitted in good faith and not for purposes of delay.

Dated: July 8, 2004
Freeport, New York

Henry M. Grubel, P.C.

By: 
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