

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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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 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.

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.

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.

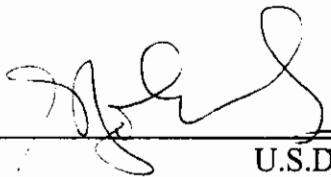
On July 8, 2004 Plaintiff filed a Motion for Sanctions Under Rule 11. The Motion was grounded in Defendants' filing of papers, letters, and exhibits in support of Defendants' claim that Defendants Citistreet and Copeland Associates, Inc. do not exist as legal entities. Plaintiff alleged that Defendants were aware that the papers, letters, and exhibits lacked evidentiary support, and that they were presented for the improper purpose of harassing Plaintiff, delaying litigation, and increasing Plaintiff's expenses. The Citigroup Defendants and State Street Defendants then filed a Motion in Opposition to Plaintiff's Motion for Rule 11 Sanctions, requesting that Plaintiff's Motion be denied and that Defendants be awarded the reasonable costs and attorneys' fees incurred in

defending against the Motion.

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, and 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 hereby ORDERS that Plaintiff's Motion for Sanctions Under Rule 11 also be referred to Magistrate Judge Pohorelsky for report and recommendation.

SO ORDERED.

Dated: October 26, 2004
Brooklyn, New York



U.S.D.J.