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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Citigroup Global Markets Inc., a)
corporation,)
)
Plaintiff,)
)
vs.)
)
Janet Early, an individual; Richard K.)
King, an individual; Wayne L. Meyer, an)
individual; and Presidio Group Wealth)
Management LLC, an Arizona limited)
liability company.)
)
Defendants.)
_____)

No. 05-CV-709-TUC-FRZ

TEMPORARY RESTRAINING ORDER

On November 30, 2005, Plaintiff Citigroup Global Markets Inc. (Citigroup)¹ filed a Complaint, an Application for Temporary Restraining Order and Preliminary Injunction, and a Declaration by a Citigroup senior vice president. Citigroup’s attorney filed a certificate stating that attorney Barry M. Corey informed him that he would be representing the Defendants and that Citigroup’s attorney provided Mr. Corey with copies of the Complaint, Application, and Declaration on November 30, 2005.

On December 2, 2005, the Court contacted Plaintiff’s attorney and Mr. Corey by telephone and informed them that a hearing on the application for a temporary restraining

¹Defendants Janet Early, Richard K. King, and Wayne L. Meyer (the Individual Defendants) were employed as financial consultants with Citigroup’s Smith Barney division. Thus, in this Order, the term “Citigroup” encompasses Citigroup’s Smith Barney division.

1 order would be held that afternoon. The hearing was held as scheduled. Plaintiff's attorney
2 and Mr. Corey were both present and made arguments to the Court.

3 After considering the Complaint, the Application, the Declaration, the exhibits
4 attached thereto, a Supplemental Declaration filed on December 2, 2005, the arguments of
5 counsel, and the standard for issuing a temporary restraining order,² the Court determines that
6 a temporary restraining order is appropriate.

7 The Court finds that:

- 8 1. Under Section 10335 of the Code of Arbitration Procedure of the National
9 Association of Securities Dealers, Inc. (the "NASD"), Citigroup Global
10 Markets Inc. has the right to seek interim injunctive relief pending an
11 arbitration hearing on the merits before a duly-appointed NASD Panel.
- 12 2. Citigroup's rights with respect to its property, proprietary and confidential
13 information, competitive interests, and contract rights with Defendants Janet
14 Early, Richard K. King, and Wayne L. Meyer (the Individual Defendants) are

17 ²"The standard for issuing a temporary restraining order is identical to the standard
18 for issuing a preliminary injunction." *Whitman v. Hawaiian Tug & Barge Corporation/Young*
19 *Bros., Ltd. Salaried Pension Plan*, 27 F. Supp. 2d 1225, 1228 (D. Haw. 1998). "The standard
20 for a preliminary injunction balances the plaintiff's likelihood of success against the relative
21 hardship to the parties." *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999).
22 To obtain a preliminary injunction, the moving party must show either: "(1) a likelihood of
23 success on the merits and the possibility of irreparable injury; or (2) that serious questions
24 going to the merits were raised and the balance of hardships tips sharply in its favor." *Id.*

25 These tests are not distinct; they represent "the opposite ends of a single 'continuum
26 in which the required showing of harm varies inversely with the required showing of
27 meritoriousness.'" *Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1217 (9th Cir.
28 1987) (quoting *San Diego Comm. Against Registration & the Draft (CARD) v. Governing*
Bd. of Grossmont Union High Sch. Dist., 790 F.2d 1471, 1473 n.3 (9th Cir.1986)). *See also*
Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc., 204 F.3d 867, 874 (9th Cir. 2000)
("[T]he required degree of irreparable harm increases as the probability of success
decreases."). The moving party has the burden of proof on each element of the test.
Environmental Council of Sacramento v. Slater, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.
2000).

1 being and will continue to be violated by Defendants unless Defendants are
2 restrained in the manner set forth below.

3 3. Citigroup has demonstrated a substantial likelihood of success on the merits
4 of its claims.

5 4. Citigroup will suffer irreparable harm and loss if Defendants are permitted to:

6 (a) solicit the brokerage business of those customers of Citigroup who are
7 subject to the Frazier and Jenks Franchise Protection Program

8 Agreements that are attached to the Complaint as Exhibits 2 and 3, and

9 (b) conduct their own business through the use of confidential records and
10 information of Citigroup.

11 5. Citigroup has no adequate remedy at law.

12 6. The Individual Defendants expressly and contractually consented to the
13 issuance of a temporary restraining order and preliminary injunction in the
14 Frazier and Jenks Franchise Protection Program Agreements that are attached
15 to the Complaint as Exhibits 2 and 3.

16 7. Greater injury will be inflicted upon Citigroup if temporary injunctive relief
17 is denied than would be incurred by Defendants if the relief requested is
18 granted.

19 8. The public interest would be served by a grant of the requested relief.
20

21 In light of the foregoing,
22

23 **IT IS ORDERED** that Plaintiffs' Application for a Temporary Restraining Order
24 (U.S.D.C. document #4) is **GRANTED**.

25
26 **IT IS FURTHER ORDERED** that:

27 1. Defendants, and each of them, are hereby **ENJOINED AND RESTRAINED**,
28 directly or indirectly, whether acting alone or in concert with others, including

1 any officer, agent, representative, and/or employee of Wachovia Securities
2 Financial Network, LLC and its affiliates, from:

3 A. Soliciting by mail, phone, personal meeting, or by any other means,
4 either directly or indirectly, any "Core Book" accounts, as defined in
5 the Frazier and Jenks Franchise Protection Program Agreements that
6 are attached to the Complaint as Exhibits 2 and 3, to: (1) transfer from
7 Citigroup to Defendants Early, King, Meyer, Wachovia, or Presidio
8 Group LLC; (2) open a new account with Early, King, Meyer,
9 Wachovia, or Presidio Group LLC; or (3) otherwise discontinue its
10 patronage and business relationship with Citigroup.

11 B. Disclosing, copying, or using any Confidential Information regarding
12 any Citigroup accounts (including without limitation the "Core Book"
13 client accounts), including those clients' identities, addresses, trading
14 practices, strategies or preferences, margin information, purchasing and
15 marketing techniques, sales information, correspondence, records,
16 financial information, and all other data, material and facts pertaining
17 to the such clients.

18 2. Defendants shall immediately return to Citigroup all originals, copies or other
19 reproductions, or derivatives, in any form whatsoever, of any such record or
20 information as described in paragraph B, above.
21

22 **IT IS FURTHER ORDERED** that this Order shall remain in full force and effect
23 until further order of the Court.

24 **IT IS FURTHER ORDERED** that the parties are granted leave to commence
25 discovery immediately in preparation for preliminary injunction proceedings.

26 **IT IS FURTHER ORDERED** that pending a preliminary injunction hearing before
27 this Court, and pursuant to § 10335(a) of the NASD Code of Arbitration Procedure and §§ 3
28 and 4 of the Federal Arbitration Act, the parties are directed to proceed toward expedited

1 arbitration on the merits of the controversy before a full Panel of arbitrators appointed in
2 accordance with § 10335(a) of the NASD Code of Arbitration Procedure.

3
4 **IT IS FURTHER ORDERED** that Plaintiff **SHALL POST** a bond of \$20,000.00
5 with the Clerk of the Court **on or before Wednesday, December 7, 2005**.


6 **IT IS FURTHER ORDERED** that a **PRELIMINARY INJUNCTION HEARING**
7 is set for Thursday, **December 22, 2005, at 2:00 p.m.**, at the Evo A. DeConcini United
8 States Courthouse, 405 West Congress, Courtroom 5A, Tucson, Arizona 85701.

9
10 A. **On or before Monday, December 19, 2005**, the parties shall file with
11 the Court, and serve on all other parties, all memoranda, affidavits, and
12 other evidence on which they intend to rely at the preliminary
13 injunction hearing.

14 B. If any party intends to present the testimony of any witness at the
15 preliminary injunction hearing, the party shall file with the Court, and
16 serve on all other parties, a statement disclosing the name, address, and
17 summary of the witness' expected testimony, or the witness' affidavit
18 or declarations revealing the substance of the expected testimony, **on**
19 **or before Monday, December 19, 2005**.

20
21 **IT IS FURTHER ORDERED** that Plaintiff **SHALL SERVE** Defendants and their
22 counsel, with a copy of this Order and every document that has been filed with the Court,
23 with all deliberate speed, but **no later than Wednesday, December 7, 2005**.

24
25 DATED this 2nd day of December, 2005, at 5:20 p.m.

26 
27 FRANK R. ZAPATA
28 United States District Judge