

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

STATE OF NEW YORK EX REL. EDELWEISS FUND, LLC,

INDEX NO. 100559/2014

Plaintiff,

- v -

JPMORGAN CHASE & CO., CITIGROUP, INC., M&T BANK
CORPORATION, WELLS FARGO & COMPANY, MERRILL
LYNCH & CO., INC., MORGAN STANLEY SMITH BARNEY
LLC

**ADMINISTRATIVE
ORDER**

Defendant.

By letters dated June 14, 2019 and June 21, 2019, Susanna Buerger, Esq., counsel for defendant Citigroup, Inc. writes on behalf of five named defendants, to request that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. The court also received a letter dated June 19, 2019 from Gordon Schnell, Esq., counsel for the plaintiff-realtor in the action opposing the application.


This Qui Tam action was commenced in May 2014 under seal pursuant to the New York False Claims Act (State Finance Law § 189, et seq). In essence, the action asserts claims against the defendants – commercial banking institutions for allegedly defrauding state issuers in their roles as remarketing agents for certain variable rate, tax-exempt municipal bonds (VRDOs) issued by the State of New York and its municipalities. Plaintiff filed its first Amended Complaint in February 2017, along with an RJI. The action was then assigned to a non-commercial part (D’Auguste, J.). In February and March, 2019, Judge D’Auguste issued orders partially lifting the seal. Counsel also represents that no defendant has been served with a copy of the RJI and the RJI does not appear in the case docket.

While it appears that an RJI was filed more than a year ago, since the seal was only recently partially lifted, the application is timely under the circumstances presented (see Commercial Division Rule 202.70 [e]). Here, plaintiff’s claims meet the monetary threshold, and the claims are premised upon allegations of fraud arising out of business dealings (see Commercial Division Rule 202.70 [b] [1]).

Based on the circumstances of this particular case, the court holds that the standards for assignment to the Commercial Division in New York County have been satisfied. Accordingly, the request for a transfer of this case to the Commercial Division is granted. The Clerk's Office is directed to reassign this case at random to a Justice of the Commercial Division.

DATE:

6/28/19



Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch