

JUDGE PRESKA

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5636

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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OFFICE OF THE COMPTROLLER OF THE CURRENCY,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil No. _____
ELIOT SPITZER,	)	
in his official capacity as Attorney General for	)	<b>Oral Argument Requested</b>
the State of New York,	)	
Defendant.	)	
	)	

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**MOTION FOR A PRELIMINARY INJUNCTION**

Under the authority of Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Office of the Comptroller of the Currency ("OCC"), respectfully requests that the Court enter a preliminary injunction, pending final resolution of this action, enjoining Defendant and his agents, including any other person acting in the name of the State of New York, from exercising visitorial authority over any federally chartered bank ("national bank") or federally licensed operating subsidiary. Plaintiff requests oral argument on the Motion.

As set forth in the memorandum of law and the Declaration of Grace E. Dailey filed in support of this Motion, and in the Complaint, Plaintiff meets all of the requirements for the issuance of a preliminary injunction. Specifically, Defendant has asserted state authority to coerce compliance with informational demands from national banks and operating subsidiaries, backed by the threat of formal administrative or judicial action in the event of noncompliance. This assertion of state authority over institutions that, under federal law, are subject to the exclusive supervisory

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authority of the OCC, 12 U.S.C. § 484, 12 C.F.R. §§ 7.4000, 7.4006, harms the OCC by derogating from the effective exercise of its authority over national banks and operating subsidiaries. Because the OCC has no remedy at law for this continuing harm, it qualifies as “irreparable harm.” Federal statutes, regulations, and caselaw support the OCC’s legal position, making it likely that the OCC will succeed on the merits of this action. Accordingly, under the applicable legal standards in the Second Circuit, preliminary injunctive relief is warranted.

Plaintiff OCC therefore respectfully requests that this Court grant a hearing on this motion as expeditiously as possible, and issue the preliminary injunction sought by the OCC pending a final resolution of the merits of the case.

Respectfully submitted,

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YVETTE RIVERA (YR1989)

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OF THE CURRENCY  
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Telephone: (202) 874-5280  
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ATTORNEYS FOR PLAINTIFF

JUNE 2005

[PROPOSED] ORDER

Under the authority of Federal Rule of Civil Procedure 65, it is hereby ORDERED that, pending the resolution of the merits of this action, Defendant Eliot Spitzer, and all those acting under his direction or in concert with him are enjoined from:

1. demanding, examining or inspecting the books and records of any national banks or their operating subsidiaries, except as specifically authorized by Federal law;
2. from instituting any enforcement activities against national banks or their operating subsidiaries, except as specifically authorized by federal law; and
3. from any further infringement of the OCC's exclusive authority to supervise and examine national banks or their operating subsidiaries, except as specifically authorized by federal law.

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UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I certify that on the 16<sup>TH</sup> day of June, 2005, I served the foregoing Motion For Preliminary Injunction, together with a Memorandum in Support, upon the Defendant, by causing two copies to be sent by overnight express service to the following:

ELIOT SPITZER  
Attorney General for the State of New York  
Executive Office of the Attorney General  
120 Broadway  
New York, NY 10271

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