



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
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New York, NY 10281

DIVISION OF
ENFORCEMENT

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December 21, 2010

BY ECF

The Honorable David R. Homer
United States Magistrate Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc., et al., 10 CV 457 (GLS)(DRH)

Dear Judge Homer:

I write regarding the property located at [REDACTED], Niskayuna, New York, currently held in the name of defendant/relief defendant Nancy McGinn. In the past few days, Mrs. McGinn has listed the Niskayuna property for sale (a copy of the real estate brokerage listing is attached). As part of its August 3, 2010 filing, however, the SEC had asked the Court to freeze the Niskayuna property. Given that the property is now listed for sale, we respectfully request a ruling on this application.

The Niskayuna property had been held in Timothy McGinn's name until Mr. McGinn transferred title to Mrs. McGinn for \$1 in November 2009. *See* Prelim. Inj. Ex. 117 (Deed). The SEC, therefore, argued that the property should be frozen as an asset of Mr. McGinn. *See* Plaintiff's Memorandum of Law dated June 3, 2010, at 15-16 (Docket # 47). On July 7, 2010, the Court found that although "the SEC would appear to have demonstrated sufficient cause to include the [Niskayuna] residence in the asset freeze[,] . . . Nancy McGinn is not a party to this action in any capacity. Unless and until she is, this Court lacks jurisdiction to restrain her actions with respect to any property presently titled to her alone." Memorandum-Decision and Order dated July 7, 2010, at 41-42 (Docket # 86).

The SEC named Nancy McGinn as a party in the Amended Complaint filed August 3, 2010 (Docket # 100). In its memorandum of law filed that day, the SEC argued that "Nancy McGinn is now a party to this action and the Court may properly include the Niskayuna house within the scope of the asset freeze." Mrs. McGinn did not file any opposition to the motion, although she did file an Answer on September 7, 2010 (Docket # 139).

The Court granted the SEC's request for interim relief on August 3, 2010. The Order to Show Cause entered on August 3, 2010, stated that "[i]t appears that an order freezing the assets of . . . Nancy McGinn . . . is necessary to protect this Court's ability to award equitable relief in the form of

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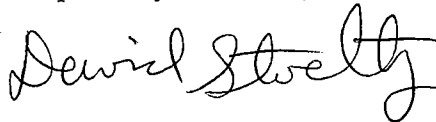
disgorgement of illegal profits fraud, and to preserve the Court's ability to approve a fair distribution for victims of the fraud." Docket # 104, at 4. Accordingly, the Court deemed the application "as a motion . . . for a preliminary injunction as to Nancy McGinn," and prohibited the "transfer . . . or other disposal of the Niskayuna property." Order to Show Cause filed Aug. 3, 2010, at 5, 9 (Docket # 104).

In its decision entered November 22, 2010, the Court resolved the aspects of the SEC's Aug. 3, 2010, motion regarding the Trust, but did not rule on the SEC's unopposed motion regarding the Niskayuna property. Docket # 194.

On December 20, 2010, I called Mrs. McGinn, who is *pro se*. Mrs. McGinn told me that she believes she is entitled to sell the Niskayuna property and retain the proceeds.

As a result of the foregoing, the SEC respectfully requests that the Court order that the SEC's motion for a preliminary injunction as to Nancy McGinn is granted and that the asset freeze in the 8/3/10 Order to Show Cause is extended pending a final disposition of this action, including over the Niskayuna property and all ill-gotten gains (including money, real or personal property, securities, commodities, or other property of any kind) of, held by, or under the direct or indirect control of Nancy McGinn.

Respectfully submitted,



David Stoelting

cc: Martin Russo, Esq.
James Featherstonhaugh, Esq.
Jill Dunn, Esq.
Nancy McGinn (by e-mail and UPS)



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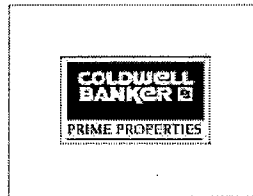
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Photo Tour



1 of 12



Niskayuna, NY 12309

\$759,500

MLS ID: 201034022

none

Property Details

MLS ID: 201034022
 Style: Colonial
 Year Built: 1999
 Bedrooms: 5
 Bathrooms: 6 (Full: 3 3/4: 0 1/2: 3 Other: 0)
 Status: Active
 Total Rooms: 13
 Fireplaces: 1
 Parking Type Description: Attached 3 cars
 New Construction: No

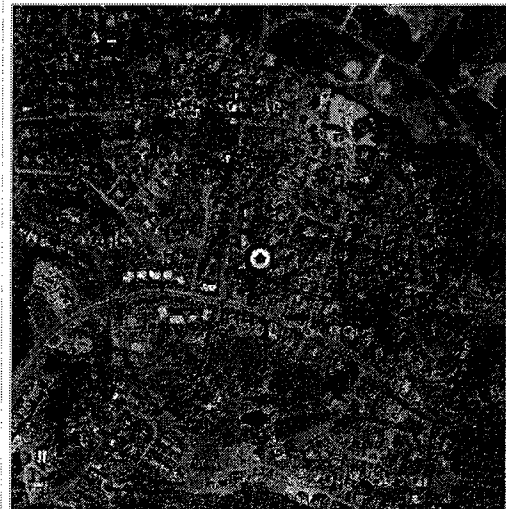
Sq. Footage
 Total Square Footage: 3,900 (\$194.74 per sq. foot)

Lot Information
 Lot Size: One Half Acre

Financial Considerations
 Estimated Annual Taxes: \$19,813

Locale
 County: Schenectady
 School District: Niskayuna

Neighborhood View



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Rooms

Room	Location	Dimensions
Bedroom	2nd Level	
Bedroom	2nd Level	
Bedroom	2nd Level	
Bedroom	2nd Level	
Bedroom	2nd Level	
Dining Room	Main Level	
Family Room	Basement	
Family Room	Main Level	
Kitchen	Main Level	
Laundry Rm	Main Level	
Living Room	Main Level	
Mud Rm	Main Level	
Study	Main Level	

Features

Age Description

Actual

Attic

Hatch

Basement

Finished Area Full

Condition

Superior

Cooling Type

Central Air

Exterior

Vinyl Brick

Garage Description

Attached

General Taxes Description

Actual

Heat Fuel

Natural Gas

Heat System

Hot Air

Living Rm Fireplace Type

Fire Place Wood

Lot Description

Landscaped

Treed Wooded

Master Bedroom

Suite

Other

General Taxes - 7830

Lot - One Half Acre

Model - Custom

Possession - Tba

School Taxes - 11983

Tax Id Section - 040.01

Tax Identification Block - 0001

Tax Identification Lot - 048.00

Roof

Asphalt Shingle

School Taxes Description

Actual

Sewer

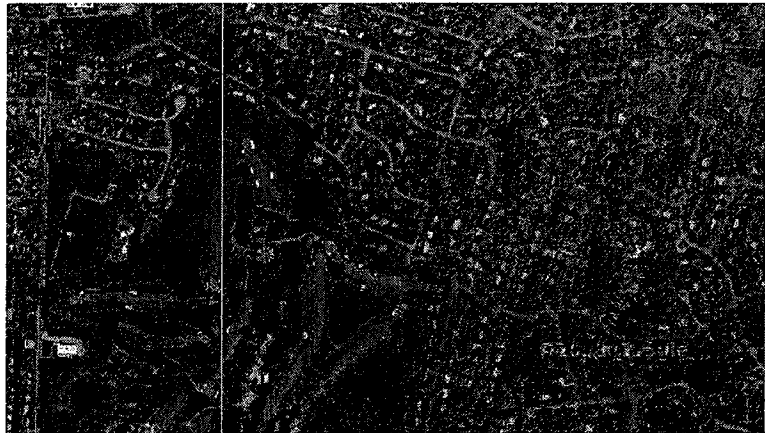
Public

Total Taxes Description

Actual

Water

Public



Listing Courtesy of Michael Flynn Real Estate of 518-272-0818

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