

STEINBERG & CAVALIERE, LLP

50 MAIN STREET
WHITE PLAINS, NY 10606

TELEPHONE: (914) 761-4200
FACSIMILE: (914) 761-4256

JEFFREY G. STEINBERG
KEVIN F. CAVALIERE

STEVEN A. COPLOFF
RONALD W. WEINER
BENJAMIN ZELERMYER
BARRY S. GOLD
JAMES F. CREIGHTON
ROBERT P. PAGANO

ONE EXCHANGE PLAZA
55 BROADWAY
SUITE 1600
NEW YORK, NY 10006

WRITER'S DIRECT
DIAL NUMBER

(203) 855-8698

September 26, 2011

VIA ECF

Hon. Gary L. Sharpe, *U.S.D.J.*
James T. Foley – U.S. Courthouse
445 Broadway
Albany, NY 12207

Re: *Securities and Exchange Commission v. McGinn, Smith & Co., Inc.*, 10 Civ. 457 (GLS) (DRH)

Dear Judge Sharpe:

We represent non-party Jill A. Dunn, Esq. We write to the Court to seek clarification of Text Only Orders entered by the Court on August 11 and 22, 2011.

On August 1, we filed an application for an Order to Show Cause seeking a stay pending appeal of the sanctions imposed by the Memorandum-Decision and Order of United States Magistrate Judge David R. Homer on July 20, 2011 (Dkt. Nos. 352-353). On the same day, we filed a Notice of Objections/Appeal from that July 20 Decision (Dkt. No 351). Plaintiff Securities and Exchange Commission opposed the application (Dkt. No. 362), and on August 11, the Court entered a Text Only Order stating that “any appeal should be directed to the Court of Appeals.”

On August 19, the SEC sought clarification of the Court’s August 11 Order (Dkt. No. 370); on August 22, the Court entered a Text Only Order, stating, “The Appeals of Magistrate Judge Decision (Dkt. Nos. 351, 355-357) are DENIED for this court lacks jurisdiction to consider any of the Notices of Objections/Appeal from Judge Homers July 20 Memorandum-Decision and Order for the reasons set forth in its August 11 Order and direct that any appeal from the July 20 Memorandum-Decision and order are to be filed with the Court of Appeals.”

On September 15, 2011, we filed a Notice of Appeal to the Court of Appeals from Magistrate Judge Homer’s Memorandum-Decision and Order (Dkt. No. 381).

E-MAIL: BZLAW@OPTONLINE.NET

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We note that on September 12, 2011, another party (Geoffrey R. Smith) filed a motion for a stay of a portion of Magistrate Judge Homer's Memorandum-Decision and Order (Dkt No. 376). The docket entry states that the motion was referred to Magistrate Judge Homer.

In its Text Only Orders of August 11 and 22, the Court did not expressly rule on Ms. Dunn's application for an Order to Show Cause seeking a stay. Accordingly, before presenting a motion for a stay to the Court of Appeals, we respectfully seek clarification as to whether the Court denied Ms. Dunn's application or whether that application is still pending or has been otherwise disposed of.

Respectfully,

s/ Benjamin Zelermyer

Benjamin Zelermyer
Bar Roll No. 516663

Cc: All counsel (via ECF)