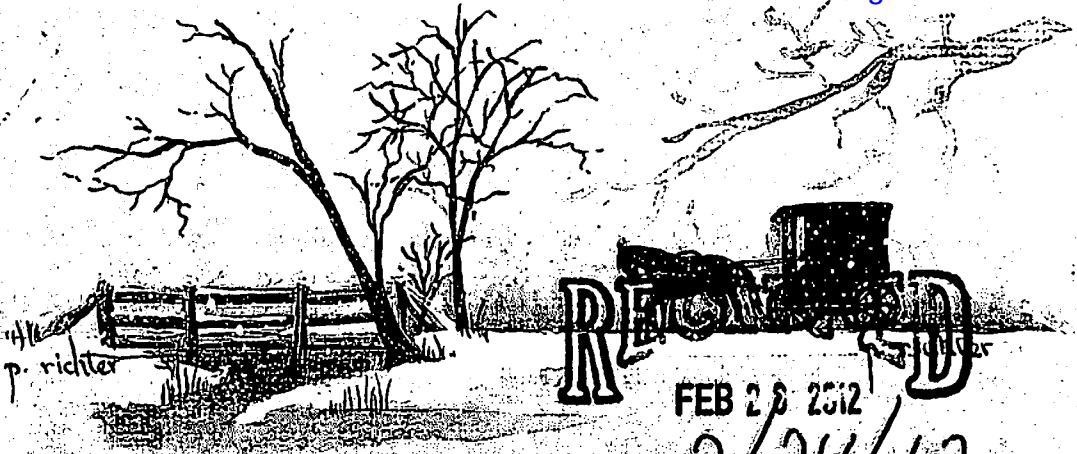


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FEB 28 2012

2/24/12
 DAVID R. HOMER
 UNITED STATE MAGISTRATE JUDGE
 ALBANY, NEW YORK

Honorable David R. Homer,

Please be pro-active in resolving this issue! Thousands of dollars are owed to Investors like ourselves. This must be resolved soon. 2 years is much too long to drag this on.

We genuinely appreciate your efforts.
 Thank you!

Sincerely,
 Dave + Nancy Hartmann

Congressman Brian Higgins
2 Larkin @ Exchange
726 Exchange Street Suite 601
Buffalo, NY 14210

Congressman Brian Higgins:

February 24, 2012

In April 2010, both the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) filed lawsuits against McGinn Smith and its principals, alleging that from 2003 through April 2010, McGinn Smith committed an ongoing fraud against over 900 investors. The suits allege that McGinn Smith lured its customers into these investments with the understanding that McGinn Smith made its money on each transaction from the difference between the cost of the investment and its rate of return. However, instead putting customer money into investments generally referred to as Income Notes, McGinn Smith fraudulently transferred investor money into entities it owned or controlled. The transfers were not disclosed to investors, in offering materials and private placement memoranda, as an activity in which the Income Note issuers could engage.

My husband and I are residents of Silver Creek, NY and of your district. We are victims of the McGinn and Smith fraud. McGinn and Smith are residents of the Saratoga, Albany area.

*This case has been drawn out for 2 years.

*We the victims have been urging the SEC to bring a strong case to SIPC for "Full" restitution.

*Scott J. Ely, Esq. of Featherstonehaugh, Wiley and Clyne LLP. I have most recently requested reimbursement. The request for reimbursement of expenses from the various parties, mainly attorneys and Receiver continues to erode what little monies are left for the VICTIMS.

*the investors(victims) have lost life savings, while the McGinn and Smith families-have purchased multiple luxury homes, hidden money in various accounts.

Meanwhile, William J. Brown, a federal receiver appointed to identify and recover assets for the alleged victims, said Wednesday that he expects to make the first distribution to investors who suffered losses in the coming weeks. "Any initial distribution if approved by the Court would be a 'partial' distribution, meaning that a later 'final' distribution would be made when things are more settled such as the completion of the SEC lawsuit," Brown said. "There is slightly more than \$8.1 million on hand with several asset sales to be filed for court approval next week which will increase that amount."

Brown said he may file a motion in U.S. District Court late next week that would seek to establish a claims process and fixing an allowance for victims.

In 2010 a trustee was appointed and since then the investors have received no reimbursement, although all the legal fees and other expenses have been reimbursed.

We would appreciate your attention and hope you support us fight for insurance in hopes of reclaiming some of our initial investments.

We would also appreciate it if you could clarify how the McGinn and Smith families get funds to pay their legal expenses and taxes on numerous homes, and the lawyers get paid all with the money that was stolen from the initial investors/victims.

Sincerely,


Nancy and David Hargrave

1286 Shore Drive Silver Creek, NY 14136

cc/ Honorable David R. Homer, Wm J. Brown Esq., Senator Charles Schumer, Senator Kirsten Gillibrand

A few comments from local newspapers:

1. "Two Albany investment brokers are accused of using millions of investor dollars for their own use.

Timothy McGinn and David Smith face 30 counts of mail and wire fraud and conspiracy.

The two allegedly took 8 million in investor dollars using it to support their lavish lifestyles.

Timothy McGinn and David Smith arrived at US District Court in Albany on Friday to be arraigned on a 30 count indictment, accused of taking millions from investors for their benefit or to help their business.

Monica Check, an alleged victim says, " When I saw all those houses in different places it made me sick. They were enjoying spending my money and living a lifestyle that was beyond comprehension."

Monica Check and her husband were just two of McGinn and Smith's alleged victims, investing and losing their life savings.

Check says, "With our \$100,000 we were supposed to get \$916 a month. We got that twice."

In part of the indictment, McGinn and Smith are accused of taking money from escrow accounts to pay other investors, encouraging investment in a company that was facing litigation and bankruptcy and didn't tell clients and using funds to buy houses and horses.

McGinn and Smith pleaded not guilty and had no comment, but the Checks said they should answer, after they say they wiped out their life savings and retirement.

Check says, "They have put us at the bottom of the barrel while they are still at the top."

There is no set date for the next court appearance.

Both McGinn and Smith were told to surrender their passports and limit their travel.

There is also a federal SEC civil case pending alleging that they took \$120 million from 900 investors."(Albany Newspaper)

2. **ALBANY** — Two federal lawmakers, Rep. Chris Gibson and Sen. Charles Schumer, have made inquiries into any financial relief that may be available for hundreds of alleged victims of an Albany brokerage implicated in a massive fraud scheme.

Timothy M. McGinn and David L. Smith, co-founders of the now-defunct McGinn, Smith & Co., were indicted Thursday on federal charges including securities fraud, mail and wire fraud, and tax evasion. They are accused of misusing investors' funds, including for personal use, and diverting those funds to pay other investor accounts or for payroll and operating expenses at their longtime Albany brokerage.

The U.S. Securities and Exchange Commission has estimated the brokerage defrauded approximately 900 investors of up to \$136 million.

Schumer, D-New York, sent a letter dated last Thursday to Eric Spittler, director of legislative affairs for the U.S. Securities and Exchange Commission, requesting information on whether alleged victims may be eligible for financial reimbursement through the Securities Investor Protection Corp. (SIPC).

A spokesperson for Gibson, R-Kinderhook, said their office has been gathering background on victims, forwarding that information to the SEC, and studying any options available to victims, including SIPC coverage.

Stephanie Valle, a spokesperson for Gibson, said the congressman has reached out to members of the House Financial Services Committee for guidance on how to advocate for victims in his district.

"We'll be doing everything possible to ensure they receive compensation for their losses," Valle said. "We want to make sure the SEC understands the gravity of the losses that have been suffered by constituents of ours."

A spokesperson for U.S. Sen. Kirsten Gillibrand, D-Brunswick, did not respond to a request for comment.

Last fall, the SEC's lead attorney in the case, David P. Stoelling, filed a letter in U.S. District Court saying his agency was examining whether investors who lost money through McGinn, Smith & Co., may be entitled to restitution through the SIPC.

Any prospect of SIPC restitution for McGinn, Smith victims may hinge on the outcome of a similar fraud case related to Texas-based Stanford Financial Group. SIPC is considering whether those victims are entitled to SIPC assistance, which can provide up to \$500,000 in restitution for fraud victims but under limited circumstances. SIPC, under congressional urging, helped victims of Bernie Madoff. Last year, 27 members of congress wrote a letter to SIPC's chairman, Orlan Johnson, urging SIPC "take the necessary steps to enhance your efforts as needed to bring this matter to a swift conclusion."

"I envision that the claims process could be substantially complete for the vast majority of claims by the end of the first quarter of 2012 or shortly thereafter," Brown said. "My intention is to then request court authority to make a partial distribution to creditors."

Read more: <http://www.timesunion.com/business/article/Federal-lawmakers-take-interest-in-McGinn-Smith-2927170.php#ixzz1mVEpRsFU>