



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**

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DIVISION OF  
ENFORCEMENT

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June 7, 2012

**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:

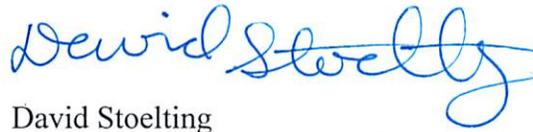
I write to request a pre-motion conference with regard to the SEC's proposed motion to amend the asset freeze to appoint the Receiver as agent to market and sell real property owned by defendants David and Lynn Smith at 2 Rolling Brook Drive, Saratoga Springs, NY (the "Property"). The Smiths have not made any mortgage payments on the Property for more than one year and currently owe \$369,718.05 to the mortgagee, Citizens Bank. Citizens Bank intends to commence a foreclosure proceeding, but is prevented from foreclosing on the Property due to the asset freeze in place since April 20, 2010. It appears that equity remains in the Property. Two days ago, we emailed counsel for the Smiths to explain the basis for the proposed motion, and yesterday we telephoned counsel for Lynn Smith. We have not yet received a substantive response.

We recently heard from Michael Kornstein, the lawyer for Citizens Bank, seeking the SEC's consent to initiate a foreclosure proceeding. The foreclosure proceeding will likely result in a judgment of foreclosure and sale, and it is probable that this process will take considerable time, resulting in additional interest and fees accruing. In addition, the sale in a foreclosure action must be a public sale of the property, and this would not likely maximize the sale price. As a result, we intend to ask that the Court appoint the Receiver to market and sell the Property, pay the mortgagee, and preserve the remainder for investors pending the resolution of the SEC case. Citizens Bank has indicated that it would support the proposed motion.

The Smiths have had the benefit of the Property for the past 12 months without making any mortgage payments, although they have rented out the Property and retained these proceeds. The Court has previously appointed the Receiver to sell two other properties (Vero Beach and Niskayuna). A Receiver-managed sale would avoid the costs and delays of the inevitable foreclosure proceeding, and maximize the amount of equity, which would then be preserved for investors pending resolution of this matter.

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Respectfully submitted,



David Stoelting

cc (by e-mail and ECF): All counsel  
Nancy McGinn  
William J. Brown  
Michael Kornstein