

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

No. 10-CV-457
(GLS/DRH)

McGINN, SMITH & CO. INC., et al.,

Defendants.

ORDER

By letter dated June 7, 2012, plaintiff Securities and Exchange Commission (SEC) requested leave under N.D.N.Y.L.R. 7.1(b)(2) to move for a modification of the asset freeze order permitting the Receiver to sell the residence of defendants David Smith and Lynn Smith at 2 Rolling Brook Drive, Saratoga Springs, New York to preserve assets for the benefit of investors. Dkt. No. 494. According to the letter, the SEC anticipated that the mortgagor of that property, Citizens Bank, would shortly be commencing a foreclosure action because the Smiths have failed to make any payments on the mortgage in over one year. A telephone conference concerning this request was held on-the-record on June 11, 2012 with counsel for the SEC, the Receiver, counsel for Citizens Bank, and counsel for David Smith and Lynn Smith. From that conference, although the Smiths have filed an application with Citizens Bank to modify the terms of their mortgage, both the bank and the SEC wish to proceed with motions to modify the asset freeze to permit the sale of the property and, if they do, the Smiths may file cross-motions for alternative relief.

WHEREFORE, as the anticipated motions cannot be resolved informally and good cause appearing for such motions, it is hereby

ORDERED that in accordance with N.D.N.Y.L.R. 7.1(b)(2), the SEC and Citizens Bank are granted leave to file motions to modify the asset freeze order to permit the sale of the Smiths' Saratoga Springs residence, and any such motions shall be filed on or before **July 11, 2012**; and

IT IS FURTHER ORDERED that defendants David Smith and Lynn Smith are granted leave to file whatever cross-motions in response to these motions they deem appropriate.

IT IS SO ORDERED.

Dated: June 13, 2012
Albany, New York


United States Magistrate Judge