

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants.

**DECLARATION IN SUPPORT
OF ORDER MODIFYING
ASSET FREEZE**

10 Civ. 457 (GLS/DRH)

I, MICHAEL A. KORNSTEIN, Esq., declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am an attorney and member of the firm of Cooper Erving & Savage LLP, attorneys for RBS Citizens, N.A. doing business as Citizens Bank.

2. I make this declaration in further support of an Order modifying the asset freeze contained in the July 22, 2010 Preliminary Injunction Order of this Court (Docket No. 96) which currently prohibits creditors from taking any action against the defendants' assets without further Order of this Court (the "Asset Freeze"), in reply to the Declaration of David L. Smith ("Smith") dated July 27, 2012, and in clarification of my declaration dated July 11, 2012.

3. In my Declaration dated July 11, 2012, in discussing the status of the Smith's loan modification application, I indicated that based on information provided to me by Citizens as of that date, certain information requested from Smith by Citizens to support their application had not yet been provided.

4. That statement was true at the time made based on the information provided to me by my client. However, I subsequently learned after receiving a copy of the email attached to Smith's Declaration as Exhibit "F" that the requested information

had apparently been faxed by Smith to Citizens on or about July 2nd but was not located by the person reviewing the Smith loan modification application until Smith contacted that person on July 12th, after my Declaration had been filed with the Court.

5. I am advised by Citizens that no final decision has been made with respect to the Smith loan modification application, and in fact, Citizens is requiring an appraisal of the Property before a final decision can be made. Citizens advised Smith by email on August 1st that its appraiser, Lincoln Appraisal and Settlement Services, LLC, has been trying to contact Smith to set up a time for the appraiser to visit the Property. As I make this declaration, I am not aware that a date has been scheduled for the appraisal.

6. If Citizens approves a loan modification, it will initially be a trial loan modification for three months to determine if the Smiths can fulfill its terms and obligations. If they do, then the modification would be finalized, the loan would no longer be considered to be in default, and Citizens would no longer seek to foreclose the loan, thereby rendering the within motion moot as far as Citizens is concerned.

7. However, if the loan modification is denied, then Citizens' interest and obligation is to pursue collection of the loan, either by foreclosure, the sale of the Property as proposed by the SEC, or the satisfaction of the loan as proposed by the Cross-Motion filed by the defendants. Any of these alternatives would require an Order Modifying the Asset Freeze.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Edgartown, Massachusetts on August 2, 2012.

/s/Michael A. Kornstein
Michael A. Kornstein