

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS/DRH)

McGINN, SMITH & CO., INC.,
McGINN, SMITH ADVISORS, LLC,
McGINN, SMITH CAPITAL HOLDINGS CORP.,
FIRST ADVISORY INCOME NOTES, LLC,
FIRST EXCELSIOR INCOME NOTES, LLC,
FIRST INDEPENDENT INCOME NOTES, LLC,
THIRD ALBANY INCOME NOTES, LLC,
TIMOTHY M. MCGINN, DAVID L. SMITH,
LYNN A. SMITH, DAVID M. WOJESKI, Trustee of
the David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04, GEOFFREY R. SMITH,
LAUREN T. SMITH, and NANCY MCGINN,

Defendants,

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants, and

DAVID M. WOJESKI, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

**ORDER MODIFYING ASSET FREEZE
TO ALLOW THE SALE OF CERTAIN PROPERTY**

WHEREAS on December 22, 2010, the Court granted the Commission's request for a preliminary injunction order freezing the assets of Nancy McGinn (the "Freeze Order");
and

WHEREAS, the property located at 26 Port Huron Drive, Niskayuna, New York 12306, is currently subject to the Freeze Order (the “New York Property”);

NOW, THEREFORE,

I.

IT IS ORDERED that the Court-appointed Receiver, William J. Brown (the “Receiver”), is given sole authority to take all necessary steps to oversee a sale of the New York Property, including the retention of a real estate agent, and the Freeze Order is hereby modified to permit the Receiver or Nancy McGinn (with the Receiver’s prior written consent) to enter into a contract for the purchase and sale of the New York Property, and to close a sale of the New York Property subject to the following terms and conditions:

A. The Receiver shall provide Nancy McGinn and the Commission with a copy of any contract proposed to be accepted for sale of the New York Property (the “Contract”) within three days of its execution, along with a proposed list of distributions (the “Distribution List”) to be made from the proceeds of such sale. The Distribution List may include, among other things, the mortgagor of the New York Property, and any usual and customary costs of closing, including broker, attorney, and recording fees, and transfer taxes.

B. Nancy McGinn may within two business days from the delivery of the Contract and the Distribution List object to the terms of the Contract, and such objections may include the sale price or the proposed distributions. The Court will resolve such objections on motion by Nancy McGinn or the Receiver if the parties do not reach agreement on such objections. Nancy McGinn and the Receiver shall not object to a request for an expedited hearing.

C. The balance of any funds remaining after payment of the Distribution List shall be split with 50% being paid to Nancy McGinn and the other 50% paid to the Receiver to be held in escrow until further order of this Court.

E. The Commission and the Receiver shall provide such documents as the purchaser of the New York Property may reasonably require to evidence the Commission's and the Receiver's consent and authority to convey title to the New York Property.

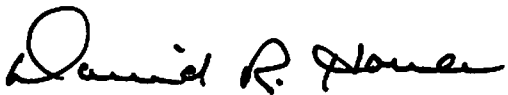
F. The Receiver shall consult with Nancy McGinn, and Nancy McGinn and Timothy McGinn shall cooperate with the Receiver in the listing, showing and closing of the sale of the New York Property.

II.

IT IS FURTHER ORDERED that, except as modified herein, the Preliminary Injunction Order dated July 22, 2010 (Dkt. 96), as modified by the Orders dated November 22, 2010 (Dkt. 194), December 1, 2010 (Dkt. 207) and December 22, 2010 (Dkt. 233) remain in full force and effect.

IT IS SO ORDERED.

Dated: Albany, New York
Feb. 11, 2011



DAVID R. HOMER
United State Magistrate Judge