

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION

*Plaintiff,*

vs.

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, AND DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, 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,

**Case No.: 1:10-CV-457  
(GLS/DRH)**

*Defendants,*

LYNN A. SMITH and NANCY MCGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon all the pleadings and proceedings heretofore had herein, Defendant Geoffrey R. Smith, successor Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 ("Trust") before a term of this Court to be held on a date convenient to the Court, before the Honorable Christian F. Hummel, United States Magistrate Judge, United States District Court for the Northern District of New York,

445 Broadway, Albany, New York, moves this Court pursuant to Fed. R. Civ. P. 60(b)(6) to vacate the Decision and Order issued by Magistrate David R. Homer on July 20, 2011.

Dated: May 21, 2013

**Featherstonhaugh, Wiley & Clyne, LLP**

By: 

James D. Featherstonhaugh  
Bar Roll No. 101616  
*Attorneys for* GEOFFREY R. SMITH,  
Trustee of the David L. and Lynn A.  
Smith Irrevocable Trust U/A 8/04/04  
99 Pine Street, Suite 207  
Albany, NY 12207  
Tel: (518) 436-0786  
Fax: (518) 427-0452

TO: David Stoelting  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[stoeltingd@sec.gov](mailto:stoeltingd@sec.gov)

Kevin McGrath  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)

William J. Dreyer  
Dreyer Boyajian LLP  
*Attorneys for David L. Smith*  
75 Columbia Place  
Albany, New York 12207  
[wdreyer@dreyerboyajian.com](mailto:wdreyer@dreyerboyajian.com)

E. Stewart Jones, Jr.  
E. Stewart Jones Law Firm  
*Attorneys for Timothy M. McGinn*  
28 Second Street

Troy, New York 12181  
[esjones@esjlaw.com](mailto:esjones@esjlaw.com)

Nancy McGinn  
29 Port Huron Drive  
Schenectady, NY 12309  
[nemcginn@yahoo.com](mailto:nemcginn@yahoo.com)

William Brown, Esq.  
Phillips Lytle LLP  
*Attorneys for Receiver*  
3400 HSBC Center  
Buffalo, N.Y. 14203  
[WBrown@phillipslytle.com](mailto:WBrown@phillipslytle.com)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

vs.

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, AND DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, 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,

**Case No.: 1:10-CV-457  
(GLS/DRH)**

*Defendants,*

LYNN A. SMITH and NANCY MCGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT/INTERVENOR, GEOFFREY R. SMITH, TRUSTEE  
OF THE DAVID L. AND LYNN A. SMITH IRREVOCABLE  
TRUST U/A 8/04/04 MOTION TO VACATE**

---

**Featherstonhaugh, Wiley & Clyne, LLP**  
James D. Featherstonhaugh, Esq.  
Bar Roll No. 101616  
Attorneys for Defendant/Intervenor, Geoffrey R.  
Smith, *Trustee of the David L. and Lynn A. Smith  
Irrevocable Trust U/A 8/04/04*  
99 Pine Street, Suite 207  
Albany, NY 12207

## TABLE OF CONTENTS

	<b>Page</b>
PRELIMINARY STATEMENT .....	1
STATEMENT OF THE FACTS .....	1
ARGUMENT .....	8
POINT I	
THE MOTION SHOULD BE GRANTED SINCE THE PURPOSE OF AN ASSET FREEZE IN A CIVIL PROCEEDING IS TO MAINTAIN STATUS QUO, HERE THE ORDER GRANTING THE RECEIVER TO TAKE CONTROL OF THE TRUST'S PROPERTY DRASTICALLY CHANGES THE STATUS QUO.....	8
POINT II	
THE MOTION SHOULD BE GRANTED BECAUSE THE TRUSTEE HAS A FIDUCIARY DUTY TO DIVERSIFY ITS ASSETS AND THE COURT SHOULD NOT DEPRIVE THE TRUST OF SUCH RIGHTS AND OBLIGATIONS BY APPOINTING THE RECEIVER TO DISPOSE OF THE PROPERTY.....	10
CONCLUSION.....	12

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page</b>
<i>S.E.C. v. Cavanagh</i> , 155 F.3d 129, 136 (2d Cir. 1998).....	9
<i>U.S. S.E.C. v. Citigroup Global Markets Inc.</i> , 673 F.3d 158, 168 (2d Cir. 2012).....	9
<i>S.E.C. v. Oakford Corp.</i> , 181 F.R.D. 269, 270, 273 (S.D.N.Y. 1998).....	9
<i>S.E.C. v. Smith</i> , 798 F. Supp. 2d 412, 442 (N.D.N.Y. 2011).....	1
<b>Rules</b>	
28 U.S.C. §1927.....	10
EPTL § 7-2.1 .....	11
EPTL § 11-2.3 .....	11
Fed. R. Civ. P. 11.....	9
Fed. R. Civ. P. 60(b)(6) .....	1, 12
<i>Restat. 2d of Trusts</i> , §176 .....	10
<b>Miscellaneous</b>	
Gibson Dunn, <i>Annual Review of SEC Enforcement 2009: A Year of Changes with More to Come</i> , January 12, 2010 .....	8

### **PRELIMINARY STATEMENT**

Defendant/Intervenor, GEOFFREY R. SMITH, Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 ("Trust"), moves this Court pursuant to Fed. R. Civ. P. 60(b)(6) to Vacate the Decision and Order issued by Magistrate Homer on July 20, 2011 which granted the Receiver leave on behalf of the Trust to "take whatever action he deems in his judgment to be financially appropriate to obtain the maximum possible return on the Great Sacandaga Lake property, including the sale or rental of that property, in whole or in part, in which case Lynn Smith will be entitled to offset any amount recovered by the Receiver for the property, less costs, against the total amount owed." *S.E.C. v. Smith*, 798 F. Supp. 2d 412, 442 (N.D.N.Y. 2011). In July of 2010 the Trust purchased the Great Sacandaga Lake property in fee simple absolute. The Trust has continuously owned the Property since that time. Currently all of the Trust's assets remain frozen. The Trust is strongly opposed to any action taken by the Receiver that encumbrances the Trust's ownership and/or use of the property. The creation of the Trust has never been questioned by this Court or the United States Government. Yet, the Court's July 20, 2011 Order forces the Trust - a wholly independent legal entity - to bear the consequences of Lynn Smith's judgment and sanction order.

### **STATEMENT OF THE FACTS**

Lynn A. Smith was born in Amsterdam, New York in September 1946. Lynn Smith was the only child of Wasil and Frances Laskevich, first generation immigrants from Lithuania and Russia. Throughout Lynn Smith's childhood she lived with her parents in a flat apartment of a two-family home on the east side of Amsterdam. Her grandmother occupied the other flat, common practice among the Eastern European population of the community. Lynn Smith's mother's family predominately worked in

the knitting mills of Amsterdam. In 1968, shortly after Lynn Smith graduated college, her mother lost a seven year battle with breast cancer. She passed away at the age of 50.

Lynn Smith's father, Wasil Laskevich, spent his career working as a skilled laborer in the turbine section of the foundry at General Electric in Schenectady. Throughout his life, Lynn Smith's father lived modestly and was able to use his savings to buy land north of Amsterdam on Great Sacandaga Lake. Her father spent his weekends single-handedly building summer cottages on small parcels of land and then selling the developed property at a profit. He used a portion of the money he made on these real estate transactions to buy more land and build more cottages. He saved the balance of profits to open an account and make investments with Hayden, Stone & Co., a brokerage house which, decades later, became Shearson/American Express. However, his many years of labor at the General Electric foundry caused him to develop brown lung disease due to exposure to inadequately ventilated working environments. He passed away from the disease in 1969. His will contained a trust which transferred his assets to his only child, Lynn Smith, upon his death. The Trust contained a stock account valued at \$60,000.00 and the property and Camp central to this motion located at Betor Smith Road, Broadablin, New York on the Great Sacandaga Lake.

It should be noted that the Standard & Poor's 500, from 1969 to when this litigation was commenced in 2010 and after being adjusted for inflation has had an average rate of return of 6.53 percent. A present value calculation of a \$60,000 initial investment with a 7 percent rate of return for a forty-one year period would equate to a total value of \$961,360.19 at the end of that such period.

David Smith was a neighbor of Lynn Smith who lived four houses down the street from her when they first met as teenagers. A short time later, David and Lynn began dating and continued to do so throughout college. In 1968, David Smith and Lynn Smith were married. In 1973, David and Lynn Smith bought a small home in Clifton Park, New York. Lynn Smith provided the down payment for the house from her inheritance. Soon after that time Lynn Smith began working as a teacher at a school in Amsterdam. David Smith began his career as a stock broker with Bache & Co. and met Timothy McGinn, an engineer with General Electric. The Smith's had two children together, Geoffrey and Lauren.

In 1980, David Smith and Timothy McGinn formed McGinn, Smith & Co. Four years later, in 1984, they moved the company operations to 99 Pine Street, Albany, New York. Lynn Smith's involvement with McGinn, Smith & Co. has always been as an executive's spouse and as a client separately. In her role as a spouse, Lynn Smith decorated their offices, sent in gifts and baked goods for the staff on holidays and birthdays, and hosted Christmas parties. In her role as a client, Lynn Smith received account statements and authorized transactions and investments with the advice of her stock broker/husband. Over the next twenty years Lynn Smith's assets and accounts grew due to strong investment decisions and positive returns. By the late 1990's, Lynn Smith had accumulated upwards of \$6,000,000 in her individual stock account.

By 2004, the two Smith children, Geoffrey and Lauren Smith, were adults and had successfully completed college. Throughout college and early on in his career, Geoffrey Smith worked part-time at McGinn, Smith & Co. Geoffrey Smith went on to pursue a career in finance. He passed the Series 7 and Series 63 examinations and he

became a licensed stock broker and registered representative. Geoffrey Smith went on to obtain the prestigious title of Certified Financial Analyst ("CFA").

Due to Lynn Smith's success of accumulating wealth and other assets, she made the conscious decision to provide financial security for her children's future. The David L. and Lynn A. Smith Irrevocable Trust was created in August 2004, to benefit her two children, just as her father had done for her. Lynn Smith personally funded this irrevocable trust by transferring 100,000 shares of Charter One Financial, Inc. stock from her stock account to the Trust's account. The Charter One Financial Stock was an enormously successful investment for Lynn Smith. The Capital One Stock was recommended from her stockbroker/husband, David Smith in 1992. At that time, Lynn Smith authorized David Smith, acting in his professional capacity, to purchase 40,000 shares of Charter One Stock at a market price of \$10.00 per share. Through dividends, acquisitions, and stock splits Lynn Smith acquired a total of 110,735 total shares of Charter One stock by August of 1999. (See attached as Exhibit A). In August of 1999 the market price of each share had risen to \$24.75, and the total value of the Charter One Stock was \$2,740,691.00. The investment in the Capital One Stock continued its strong performance until August of 2004 when it was sold to fund the Trust.

The creation of the trust has never been questioned. In Magistrate Homer's July 7, 2010 Decision and Order, he acknowledged the lawful creation of the Trust by stating:

"it is undisputed that the Trust originated from bank stock in the stock account purchased in the early 1990's well prior to 2003 when the SEC alleges the scheme began here." T.349. In fact, none of the named entities except MS&Co. existed at that time. T.363. Thus, there is no proof that fraudulently obtained funds were deposited into the stock account prior to the purchase of the bank stock in the early 1990's."

Dkt. No. 86

The Trust was created on August 4, 2004. On August 31, 2004 the Trust entered into a private annuity agreement with David and Lynn Smith. The annuity agreement established contractual obligations between the parties, and preserved the overall purpose of the Trust, the financial benefit to the Smith's adult children. The annuity agreement established that beginning on September 26, 2015, the Trust would begin annual payments of \$489,932 to David and Lynn Smith. The agreement set forth as follows:

Those payments are scheduled to continue annually on the 26<sup>th</sup> day of each September thereafter for and during the full term of the natural life of the last to die of the transferors...at the death of the last to die of the transferors, the transferee shall cease making payments, and there shall be no further sums owed to the transferors, or to the estate of either transferor.

(See Exhibit B attached to Geoffrey R. Smith's Affidavit in Support dated May 21, 2013).

The Court should also be aware of paragraphs four and five of the private annuity agreement which are set forth as follows:

4. If the Transferors request to sever the joint nature of the annuity provided by this Agreement, the Transferee, in its discretion, shall create two (2) separate annuities, one for each Transferor payable to each Transferor until the death of such Transferor. The Transferee shall recalculate the annuity payments based upon a sum of one-half of any unpaid balance then owing under this Agreement. The Transferee shall use the same rate of interest and the same annuity factors to recalculate the annuities that are used in this Agreement and the Transferee shall use the separate life expectancies of each Transferor. Transferee shall further attempt, as far as possible, to conform each annuity with existing tax laws and rulings for the best tax treatment for each Transferor and the Transferee. The Transferors shall equally bear the cost associated with severing the annuity hereunder and creating separate annuities.

5. It is an express term and condition of this Agreement that the rights of, income or amounts payable hereunder to the Transferors shall not be subject to assignment, pledge, hypothecation, mortgage, pledge,

attachment, execution, judgment, garnishment, anticipation or other disposition or impairment.

*Id.*

When the Trust entered into the private annuity agreement with David and Lynn Smith, the value of the annuity payments were derived from a forecasted annual after tax rate of return on the Trust of 4.60 percent. Given historical market returns over the past twenty five years, it was anticipated that the Trust would in fact grow at a higher rate of return than 4.60 percent. Actuarial tables give an estimated life expectancy of David and Lynn Smith that would result in annuity payments ceasing in 2029. The below table shows the value of the Trust in each of the 13 years that would follow the first annuity payment in September of 2015, at various annual rates of return since the Trust's inception in 2004.

Value of Trust with Private Annuity		Annual After Tax Return							
Year that Annuity Payments Cease		5%	6%	7%	8%	9%	10%	11%	12%
	2016	\$ 7,496,241	\$ 8,458,306	\$ 9,525,564	\$ 10,708,371	\$ 12,017,988	\$ 13,466,659	\$ 15,067,678	\$ 16,835,473
	2017	\$ 7,381,121	\$ 8,475,872	\$ 9,702,421	\$ 11,075,108	\$ 12,609,675	\$ 14,323,393	\$ 16,235,190	\$ 18,365,798
	2018	\$ 7,260,245	\$ 8,494,492	\$ 9,891,659	\$ 11,471,185	\$ 13,254,614	\$ 15,265,800	\$ 17,531,129	\$ 20,079,762
	2019	\$ 7,133,325	\$ 8,514,230	\$ 10,094,143	\$ 11,898,948	\$ 13,957,597	\$ 16,302,448	\$ 18,969,622	\$ 21,999,401
	2020	\$ 7,000,060	\$ 8,535,152	\$ 10,310,801	\$ 12,360,931	\$ 14,723,849	\$ 17,442,761	\$ 20,566,348	\$ 24,149,397
	2021	\$ 6,860,131	\$ 8,557,329	\$ 10,542,625	\$ 12,859,874	\$ 15,559,063	\$ 18,697,105	\$ 22,338,714	\$ 26,557,393
	2022	\$ 6,713,205	\$ 8,580,837	\$ 10,790,677	\$ 13,398,732	\$ 16,469,447	\$ 20,076,884	\$ 24,306,041	\$ 29,254,348
	2023	\$ 6,558,934	\$ 8,605,755	\$ 11,056,092	\$ 13,980,698	\$ 17,461,765	\$ 21,594,640	\$ 26,489,773	\$ 32,274,938
	2024	\$ 6,396,948	\$ 8,632,168	\$ 11,340,087	\$ 14,609,222	\$ 18,543,392	\$ 23,264,172	\$ 28,913,716	\$ 35,657,999
	2025	\$ 6,226,864	\$ 8,660,166	\$ 11,643,961	\$ 15,288,028	\$ 19,722,366	\$ 25,100,657	\$ 31,604,293	\$ 39,447,026
	2026	\$ 6,048,275	\$ 8,689,844	\$ 11,969,106	\$ 16,021,138	\$ 21,007,446	\$ 27,120,791	\$ 34,590,833	\$ 43,690,738
	2027	\$ 5,860,757	\$ 8,721,303	\$ 12,317,012	\$ 16,812,897	\$ 22,408,185	\$ 29,342,938	\$ 37,905,893	\$ 48,443,694
	2028	\$ 5,663,862	\$ 8,754,649	\$ 12,689,270	\$ 17,667,997	\$ 23,934,989	\$ 31,787,300	\$ 41,585,609	\$ 53,767,005
	2029	\$ 5,457,123	\$ 8,789,996	\$ 13,087,587	\$ 18,591,505	\$ 25,599,206	\$ 34,476,098	\$ 45,670,094	\$ 59,729,114

However, in reality the Trust did not grow at the expected rate from 2004 to the present. Using the same analysis, but beginning growth of the Trust at today's current value, the below table illustrates the expected value of the Trust in the same 13 year period at various annualized rates of return.

Value of Trust with Private Annuity		Annual After Tax Return							
Year that Annuity Payments Cease		5%	6%	7%	8%	9%	10%	11%	12%
	2016	\$ 3,226,401	\$ 3,333,596	\$ 3,442,833	\$ 3,554,132	\$ 3,667,510	\$ 3,782,988	\$ 3,900,585	\$ 4,020,320
	2017	\$ 2,897,789	\$ 3,043,680	\$ 3,193,900	\$ 3,348,530	\$ 3,507,654	\$ 3,671,355	\$ 3,839,717	\$ 4,012,826
	2018	\$ 2,552,746	\$ 2,736,369	\$ 2,927,541	\$ 3,126,480	\$ 3,333,411	\$ 3,548,558	\$ 3,772,154	\$ 4,004,433
	2019	\$ 2,190,452	\$ 2,410,619	\$ 2,642,537	\$ 2,886,667	\$ 3,143,486	\$ 3,413,482	\$ 3,697,159	\$ 3,995,033
	2020	\$ 1,810,042	\$ 2,065,324	\$ 2,337,582	\$ 2,627,668	\$ 2,936,467	\$ 3,264,898	\$ 3,613,914	\$ 3,984,505
	2021	\$ 1,410,612	\$ 1,699,311	\$ 2,011,281	\$ 2,347,950	\$ 2,710,817	\$ 3,101,456	\$ 3,521,513	\$ 3,972,714
	2022	\$ 991,211	\$ 1,311,338	\$ 1,662,138	\$ 2,045,854	\$ 2,464,859	\$ 2,921,670	\$ 3,418,947	\$ 3,959,507
	2023	\$ 550,839	\$ 900,086	\$ 1,288,556	\$ 1,719,590	\$ 2,196,764	\$ 2,723,905	\$ 3,305,100	\$ 3,944,716
	2024	\$ 88,449	\$ 464,160	\$ 888,823	\$ 1,367,225	\$ 1,904,541	\$ 2,506,363	\$ 3,178,729	\$ 3,928,150
	2025	\$ (397,060)	\$ 2,077	\$ 461,109	\$ 986,671	\$ 1,586,018	\$ 2,267,067	\$ 3,038,457	\$ 3,909,596
	2026	\$ (906,845)	\$ (487,730)	\$ 3,454	\$ 575,673	\$ 1,238,827	\$ 2,003,842	\$ 2,882,755	\$ 3,888,816
	2027	\$ (1,442,119)	\$ (1,006,926)	\$ (486,236)	\$ 131,795	\$ 860,390	\$ 1,714,294	\$ 2,709,926	\$ 3,865,541
	2028	\$ (2,004,157)	\$ (1,557,274)	\$ (1,010,204)	\$ (347,594)	\$ 447,893	\$ 1,395,792	\$ 2,518,086	\$ 3,839,474
	2029	\$ (2,594,297)	\$ (2,140,642)	\$ (1,570,851)	\$ (865,333)	\$ (1,729)	\$ 1,045,439	\$ 2,305,143	\$ 3,810,279

It is obvious from the above analysis that when David and Lynn Smith created the Trust in 2004 it was for the benefit of the Smith's children. Thus, the private annuity agreement, while benefiting David and Lynn Smith, was also a benefit to the value of the Trust. The ensuing economic collapse in 2008, coupled with the freezing of the Trust by the SEC destroyed the ability to earn market returns that would allow the private annuity to be beneficial to the Trust.

The original trustee of the Trust was a longtime friend of the Smiths, Mr. Thomas Urbelis. Thomas Urbelis was trustee between August 2004 and the Spring of 2010, when he resigned due to this litigation being commenced. After Thomas Urbelis resigned David Wojeski then became the trustee. As Trustee David Wojeski exercised his fiduciary obligation to diversify the Trust's assets in a manner that benefited the beneficiaries and would grow the Trust's Assets. This included the purchase of the Great Sacandoga Lake property owned by Lynn Smith through her inheritance. David Wojeski remained Trustee until he resigned January 28, 2011. After David Wojeski's

resignation, David and Lynn Smith had tremendous difficulties finding someone willing to take on the position of Trustee.

However Geoffrey Smith reluctantly accepted the position in the attempt to help his family during a difficult time. Prior to Geoffrey Smith's appointment as trustee, he was not involved in any decisions related to the Trust's administration, its investments or acquisitions except that he was the broker of record for a brief period of time. During that brief time period Geoffrey Smith made only one investment decision which was to roll over an existing covered option position that was about to expire.

### **ARGUMENT**

#### **POINT I**

**THE MOTION SHOULD BE GRANTED SINCE THE PURPOSE OF AN ASSET FREEZE IN A CIVIL PROCEEDING IS TO MAINTAIN STATUS QUO, HERE THE ORDER GRANTING THE RECEIVER TO TAKE CONTROL OF THE TRUST'S PROPERTY DRASTICALLY CHANGES THE STATUS QUO.**

Parallel proceedings occur when both criminal and civil cases are in progress at the same time, against the same defendant, and for conduct arising out of the same facts. The fallout of the 2008 financial crisis has led to parallel proceedings becoming far more common due to collaboration between federal regulators. See, Gibson Dunn, *Annual Review of SEC Enforcement 2009: A Year of Changes with More to Come*, January 12, 2010.<sup>1</sup> Judge Jed S. Rakoff of the Southern District of New York described the impact of parallel proceedings as placing a defendant 'in the jaws of a pincers' and questioned the government's standard practice of filing concurrent civil and criminal cases with the

---

<sup>1</sup> Available at <http://www.gibsondunn.com/publications/Pages/AnnualReviewofSECEnforcement2009.aspx>.

intention to stay the former. *S.E.C. v. Oakford Corp.*, 181 F.R.D. 269, 270 (S.D.N.Y. 1998). Judge Rakoff went on to note in his decision that the government's motivation for seeking a stay is often to maintain a tactical advantage, which is not by itself a proper basis for granting a stay. *Oakford Corp.* at 273. Judge Rakoff concluded his opinion by putting the SEC and the U.S. Attorney's Office on notice that 'such doubtful practices will receive strict scrutiny in the future.' *Id.*

The principal purpose of an order freezing assets is to preserve the status quo while a case proceeds to final judgment. *S.E.C. v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998) (the injunction merely freezes the status quo). It is an equally well settled point of law that the purpose of a stay, including the one in place in this case, is to maintain the status quo existing prior to the district court's order. *U.S. S.E.C. v. Citigroup Global Markets Inc.*, 673 F.3d 158, 168 (2d Cir. 2012).

Here, on November 22, 2010 Magistrate Homer issued a decision and Order which froze the Trust Assets. (Dkt. No. 194). Prior to the November 22, 2010 Order, the Trust maintained full ownership of the Great Sacandaga Lake property in fee simple absolute. However, Magistrate Homer's July 20, 2011 sanction Decision and Order, issued sixteen months after the asset freeze, will drastically alter the status quo and will punish and deprive the Trust of its rightful assets.

The SEC did not seek sanctions or any other remedies against the Trust in its sanction motion. The SEC did not seek to have the Trust satisfy any inability on the part of Lynn Smith to satisfy disgorgement and penalty sanctions that may be ordered by the Court. The Trust was not subject to any sanctions pursuant to Fed. R. Civ. P. 11 or the Court's inherent power under the unequivocal terms of the Order. Moreover, the District

Court's Order did not find that the Trust in any way caused the SEC to incur any expenses in litigating its motion for reconsideration pursuant to 28 U.S.C. §1927.

Nevertheless, the Court's Order forces the Trust - a wholly independent legal entity whose legitimacy has never been in question - to bear the consequences of Lynn Smith's judgment and sanction order. In compelling the Receiver of the McGinn-Smith entities "to take whatever action he deems in his judgment to be financially appropriate to obtain the maximum possible return on the [Trust's] Great Sacandaga Lake property, including the sale or rental of that property..." to satisfy Mrs. Smith's judgment.

It is respectfully submitted that the Order which compels the Receiver to take any action he deems appropriate to obtain the maximum return on the Trust's Great Sacandaga Lake property should be vacated because the Trust is the sole owner of the property, not Lynn Smith.

## **POINT II**

### **THE MOTION SHOULD BE GRANTED BECAUSE THE TRUSTEE HAS A FIDUCIARY DUTY TO DIVERSIFY ITS ASSETS AND THE COURT SHOULD NOT DEPRIVE THE TRUST OF SUCH RIGHTS AND OBLIGATIONS BY APPOINTING THE RECEIVER TO DISPOSE OF THE PROPERTY.**

It is also unquestionable that a trustee is under a duty to a trust's beneficiaries to use reasonable care and skill to preserve trust property. *Restat. 2d of Trusts*, §176. Included among a trustee's duties is the duty to use reasonable care to protect the trust property from loss. *Id.* Pursuant to the EPTL, a trustee holds legal title to a trust's property under a fiduciary duty to manage and safeguard the property for the benefit of the beneficiaries who hold equitable title. EPTL § 7-2.1. As such, it is only the trustee that has the legal authority to authorize the sale or rental of trust property. *Id.*

The Prudent Investor Rule founded in EPTL § 11-2.3 establishes a trustee's duty to diversify and manage the trust's property. Under this rule, the trustee has a duty to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the trust agreement. Section (b) (3) and (4) of The Prudent Investor Rule establishes the duty of the trustee as follows:

- (3) The prudent investor standard requires a trustee:
  - (C) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and
  - (D) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial assets.
- (4) The prudent investor standard authorizes a trustee:
  - (A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;

In this case, the Court has disregarded the trustee's fiduciary duty of diversification. In July 2010, with the approval of the trust beneficiaries, the trustee determined that the Great Sacandaga Lake Property offered an attractive and appropriate investment opportunity that allowed the trust to take advantage of low housing prices and improving market conditions. On July 22, 2010, the Trust acquired sole ownership of the Great Sacandaga Lake Property through a validly executed purchase and sale agreement. The Great Sacandaga Lake property was purchased by the Trust for \$600,000 after a real estate expert appraised the property and determined that value to be fair market value. (See Exhibit E attached to the Affidavit of Geoffrey R. Smith in support dated May 21, 2013). Neither the law nor the facts support the Order requiring Lynn Smith's sanction to

2013). Neither the law nor the facts support the Order requiring Lynn Smith's sanction to be endured by the Trust itself, and the Motion to Vacate should be granted.

**CONCLUSION**

For the reasons stated, it is respectfully requested that this Court grant the Motion pursuant to Fed. R. Civ. Proc. 60(b)(6) to Vacate the Decision and Order issued by Magistrate Homer on July 20, 2011 compelling the sale or rental of the Trust's real property, and allow the Trust to continue to hold the real property as an asset. In addition, the Court should direct the receiver to, upon the advice and consent of the Trustee, to diversify and invest the funds in the Trust in compliance with EPLT § 11-2.3.

Dated: May 21, 2013

Respectfully submitted,

**Featherstonhaugh, Wiley & Clyne, LLP**

By: 

James D. Featherstonhaugh

Bar Roll No. 101616

*Attorneys for* GEOFFREY R. SMITH,

Trustee of the David L. and Lynn A. Smith

Irrevocable Trust U/A 8/04/04

99 Pine Street, Suite 207

Albany, NY 12207

Tel: (518) 436-0786

Fax: (518) 427-0452

To: David Stoelting  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[stoeltingd@sec.gov](mailto:stoeltingd@sec.gov)

Kevin McGrath  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)

William J. Dreyer  
Dreyer Boyajian LLP  
*Attorneys for David L. Smith*  
75 Columbia Place  
Albany, New York 12207  
[wdreyer@dreyerboyajian.com](mailto:wdreyer@dreyerboyajian.com)

E. Stewart Jones, Jr.  
E. Stewart Jones Law Firm  
*Attorneys for Timothy M. McGinn*  
28 Second Street  
Troy, New York 12181  
[esjones@esjlaw.com](mailto:esjones@esjlaw.com)

Nancy McGinn  
29 Port Huron Drive  
Schenectady, NY 12309  
[nemcginn@yahoo.com](mailto:nemcginn@yahoo.com)

William Brown, Esq.  
Phillips Lytle LLP  
*Attorneys for Receiver*  
3400 HSBC Center  
Buffalo, N.Y. 14203  
[WBrown@phillipslytle.com](mailto:WBrown@phillipslytle.com)

# **EXHIBIT A**

**SUMMARY OF TRANSACTIONS INVOLVING  
CHARTER ONE STOCK HELD IN STOCK ACCOUNT  
(SOURCE: BROKERAGE ACCOUNT STATEMENTS FOR ACCT. NO. [REDACTED] 091)**

DATE	NUMBER of SHARES	MARKET PRICE (AT CLOSE)	VALUE (AT CLOSE)	NOTES
1992	40,000	\$10	\$400,000	L. Smith's Affidavit in Support of Smith Trust's Motion to Intervene.
8/27/1999 <sup>1</sup>	110,735	\$24.75	\$2,740,691	
9/24/1999	110,735	\$23.125	\$2,560,747	
10/29/1999	116,271	\$24.563	\$2,855,965	Acquired 5,536 shares as stock dividend.*
11/26/1999	116,271	\$22.3130	\$2,594,355	
12/31/1999	116,271	\$19.125	\$2,223,683	
1/28/2000	114,071	\$18.8130	\$2,146,018	Journal of 2,200 shares to [REDACTED] 065 LOA on 1/4/2000. (No other information provided in statement as to where shares went.)
2/25/2000	114,071	\$15.938	\$1,818,064	
3/31/2000	114,071	\$21	\$2,395,491	
4/28/2000	114,071	\$20.313	\$2,317,124	
5/26/2000	114,071	\$21.9380	\$2,502,490	
6/30/2000	114,071	\$23	\$2,623,633	
7/28/2000	114,071	\$21.375	\$2,438,268	
8/25/2000	114,071	\$22.813	\$2,602,302	
9/29/2000	114,071	\$24.375	\$2,780,481	
10/27/2000	119,774	\$21.938	\$2,627,602	Acquired 5,703 shares as stock dividend.*
11/30/2000	119,774	\$24	\$2,874,576	
12/29/2000	119,600	\$28.875	\$3,453,450	174 shares delivered to [REDACTED] 418 on 12/27/00. (No other information provided in statement as to where shares went.)
1/26/2001	119,600	\$27.125	\$3,244,150	
2/23/2001	119,600	\$28.51	\$3,409,796	
3/30/2001	119,600	\$28.3	\$3,384,680	
4/27/2001	119,600	\$29.22	\$3,494,712	
5/25/2001	119,600	\$30.150	\$3,605,940	

<sup>1</sup> Date of first available brokerage statement for Stock Account.

\* Note regarding stock dividends: The brokerage statements list these acquisitions as stock purchases with no purchase price. For the years from 1999 to 2002, the relevant Forms 10-Q explain that a 5% stock dividend was issued, which explains why no purchase price was listed for the acquisition of the shares.

**SUMMARY OF TRANSACTIONS INVOLVING  
CHARTER ONE STOCK HELD IN STOCK ACCOUNT  
(SOURCE: BROKERAGE ACCOUNT STATEMENTS FOR ACCT. NO. [REDACTED] 091)**

DATE	NUMBER of SHARES	MARKET PRICE (AT CLOSE)	VALUE (AT CLOSE)	NOTES
6/29/2001	117,600	\$31.9	\$3,751,440	Sold 2,000 shares on 6/20/01 for \$31.04/share for gross profit of \$62,077.93
7/27/2001	100,600	\$31.78	\$3,197,068	Sold total of 17,100 shares from 7/3-7/23 for \$31.30 to \$32.74/share for total gross profit of \$541,421.89.
8/31/2001	100,600	\$29.2	\$2,937,520	
9/28/2001	105,630	\$28.22	\$2,980,879	Acquired 5,030 shares by stock dividend.*
10/26/2001	105,630	\$27.27	\$2,880,530	
11/30/2001	105,630	\$27.55	\$2,910,107	
12/31/2001	105,430	\$27.15	\$2,862,425	200 shares delivered to [REDACTED] 418 on 12/20/01. (No other information provided in statement as to where shares went.)
1/25/2002	105,430	\$29.7	\$3,131,271	
2/22/2002	105,430	\$29.32	\$3,091,208	
3/28/2002	105,430	\$31.22	\$3,291,525	
4/26/2002	105,430	\$35.07	\$3,697,430	
5/31/2002	100,000	\$36.2	\$3,620,000	Sold total of 5,430 shares on 5/16/02 for \$35.23 to \$35.49/share for gross profit of \$192,096.19.
6/28/2002	100,000	\$34.38	\$3,438,000	
7/26/2002	100,000	\$31.62	\$3,162,000	
8/30/2002	100,000	\$33.7	\$3,370,000	
9/27/2002	100,000	\$30.03	\$3,003,000	
10/25/2002	0	0	0	Acquired 5,000 shares by stock dividend.* On 10/14/02, 105,000 shares journaled to [REDACTED] 674. (No other information provided in statement as to where shares went.)
11/29/2002	0	0	0	No Charter One shares in account.
12/31/2002	0	0	0	No Charter One shares in account.
1/31/2003	0	0	0	No Charter One shares in account.
2/28/2003	0	0	0	No Charter One shares in account.
3/28/2003	0	0	0	No Charter One shares in account.

**SUMMARY OF TRANSACTIONS INVOLVING  
CHARTER ONE STOCK HELD IN STOCK ACCOUNT  
(SOURCE: BROKERAGE ACCOUNT STATEMENTS FOR ACCT. NO. [REDACTED] 091)**

DATE	NUMBER of SHARES	MARKET PRICE (AT CLOSE)	VALUE (AT CLOSE)	NOTES
4/25/2003	0	0	0	No Charter One shares in account.
5/30/2003	0	0	0	No Charter One shares in account.
6/27/2003	0	0	0	No Charter One shares in account.
7/25/2003	0	0	0	No Charter One shares in account.
8/29/2003	105,000	\$31	\$3,255,000	On 7/29/03, 105,000 shares journaled from [REDACTED] 674. (No other information provided in statement as to where shares came from.)
9/30/2003	105,000	\$30.6	\$3,213,000	
10/31/2003	105,000	\$31.96	\$3,355,800	
11/28/2003	105,000	\$33.22	\$3,488,100	
12/31/2003	105,000	\$34.55	\$3,627,750	
1/30/2004	105,000	\$36.21	\$3,802,050	
2/27/2004	105,000	\$36.22	\$3,803,100	
3/31/2004	105,000	\$35.36	\$3,712,800	
4/30/2004	105,000	\$33.37	\$3,503,850	
5/28/2004	105,000	\$43.96	\$4,615,800	
6/30/2004	105,000	\$44.19	\$4,639,950	
7/30/2004	105,000	\$44.41	\$4,663,050	
8/31/2004	105,000	\$44.47	\$4,669,350	
9/30/2004	0	0	0	On 9/1/04, 100,000 shares journaled to Smith Trust account. 5,000 subject to cash merger for gross profit of \$222,500.

Total Shares Sold From August 1999 to September 2004 = 29,530  
(including 5,000 shares subject to cash merger)

Total Shares transferred out of account from = 2,574  
from August 1999 to September 2004

Gross Profits from Sales of Charter One stock:	June 2001	\$62,077.93
	July 2001	\$541,421.89
	May 2002	\$192,096.19
	September 2004	\$222,500.00
	<b>TOTAL</b>	<b>= \$1,018,096.01</b>

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION

*Plaintiff,*

vs.

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, AND DAVID L. SMITH,  
LYNN A. SMITH, GEOFFREY R. SMITH, 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,

**Case No.: 1:10-CV-457  
(GLS/DRH)**

*Defendants,*

LYNN A. SMITH and NANCY MCGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**AFFIDAVIT OF DEFENDANT/INTERVENOR GEOFFREY R. SMITH,  
TRUSTEE OF THE DAVID L. AND LYNN A. SMITH IRREVOCABLE TRUST  
U/A 8/04/04 IN SUPPORT OF MOTION TO VACATE**

I, GEOFFREY R. SMITH, being duly sworn deposes and says:

1. I respectfully submit this affidavit in support of the Motion brought by the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 ("Trust"), seeking to vacate the Order authorizing the receiver to dispose of the vacation home currently owned by the Trust, by which Order was issued as a part of the sanction Order.

2. I became trustee of the Trust on January 28, 2011. I was asked by my mother and father to step in as the successor trustee after David Wojeski resigned from the position shortly before I was appointed. I accepted this responsibility because my parents, as the creators of the Trust, were having difficulties finding someone willing to take on this appointment in light of the then ongoing litigation.

3. Prior to David Wojeski's appointment as trustee, Thomas Urbelis, was the trustee. He served in that capacity from the date of the creation of the Trust until he resigned in late April or early May of 2010 as a result of the litigation commenced by the Securities and Exchange Commission ("SEC") against my parents but involving the Trust.

4. My sister Lauren Mirich and I are the beneficiaries of the Trust.

5. Prior to my appointment as trustee, I was not involved in any decisions related to the Trust's administration, its investments or acquisitions except that I was the broker of record for a brief period of time in which I made only one investment decision which was to roll over an existing covered option position that was about to expire.

6. I am a 1998 graduate of Shenendehowa High School in Clifton Park, New York.

7. I attended Lehigh University from 1998 through 2002 graduating with a B.S. in finance and a minor in accounting.

8. While attending Lehigh I interned at McGinn, Smith & Co. and used the opportunity to study for and pass the Series 7 exam in 2000 and the Series 63 exam in 2001 qualifying me to be a registered representative.

9. Following my junior year I was fortunate enough to find an internship in the Manhattan office of an investment bank named Tucker Anthony. Upon graduation from Lehigh I was hired by the firm Bernstein, Greenberg Trading, LLC, a commodities trading firm where I was employed from 2002 through 2008 as a trading assistant on the New York Board of Trade Commodities Exchange Floor.

10. My job was to assist in relaying market information to a group of seven options traders and in addition I was trained to trade the firm's capital a responsibility that I received after approximately four years.

11. Beginning in 2006 I began working part-time for McGinn, Smith & Co., as the trading floor closed at 1:00 p.m., and the remainder of my day was free.

12. During this time period I had also embarked on the Chartered Financial Analyst Program. The CFA program is broken into three separate exams and covers the topics of ethics, accounting, economics, equity, fixed income, derivatives and currency exchange. It is an extremely rigorous program and only approximately 5 percent of the individuals who begin the program successfully complete it. I finished the program in two and a half years passing the Level 1 exam in December of 2007, the Level 2 exam in June of 2008 and the Level 3 exam in June of 2009. In August of 2009 I was awarded the designation, Chartered Financial Analyst.

13. Commencing in 2008 I concluded my employment with Bernstein, Greenberg Trading, LLC and went to work full-time for McGinn, Smith & Co. as a retail broker, specializing in institutional sales and structured products and Vice President of investment banking. I continued in that employment until April 20, 2010.

14. I am currently employed with Access Trade Management, LLC which is a barter finance company. The company acts as a financier for other companies' marketing budgets, by receiving payment for marketing campaigns in product rather than cash. It then monetizes that product in order to pay for marketing services rendered. My role at the firm is twofold: first to build financial models that demonstrate how a company saves money by engaging in business with Access, and secondly to prospect new business.

15. I believe it would be of assistance to the Court in making its determination in this matter to understand, in a general way, the background of the camp and creation of the Trust.

16. My mother Lynn Smith was born in Amsterdam, New York in 1946 to Wasil and Frances Laskevich. Her mother was one of three children, and most of her family worked in the knitting mills of Amsterdam.

17. My mother's parents were not educated people, but my grandfather was very industrious and hard working, always trying to make a better life for his wife and daughter.

18. My mother's family lived modestly and my grandfather used their savings to buy land north of Amsterdam on Great Sacandaga Lake. On the weekends, he would single handedly build summer cottages on small parcels of land and then sell the improved property at a profit. He used some of the money he made on these real estate transactions to buy more land to build more cottages.

19. In 1969 my mother's father was diagnosed with brown lung disease as a result of his many years working in the foundry for General Electric. His will created a trust that allowed a portion of his estate to pass to my mother immediately and the

remainder to pass to her five years later. The estate itself included the property on Great Sacandaga Lake.

20. Throughout our childhood and into our early adult years my parents, my sister Lauren, and I have spent at least a portion of every summer as well as innumerable weekends at the property on Great Sacandaga Lake which is the subject of this proceeding.

21. The Trust at issue is a private annuity trust which was created on August 4, 2004. (Annexed hereto and made apart hereof as Movant's Exhibit A is the Declaration of Trust).

22. As stated by Magistrate Homer in his decision of July 7, 2010, "it is undisputed that the Trust originated from bank stock in the stock account purchased in the early 1990's well prior to 2003 when the SEC alleges the scheme began here. T.349. In fact, none of the named entities except MS&Co. existed at that time. T.363. Thus, there is no proof that fraudulently obtained funds were deposited into the stock account prior to the purchase of the bank stock in the early 1990's."

23. It is also beyond dispute that effective on August 4, 2004 the Trust entered into an Annuity Agreement with David and Lynn Smith that, commencing on September 26, 2015 contractually obligates the Trust to commence annual payments of \$489,932. "Those payments are scheduled to continue annually on the 26<sup>th</sup> day of each September thereafter for and during the full term of the natural life of the last to die of the transferors...at the death of the last to die of the transferors, the transferee shall cease making payments, and there shall be no further sums owed to the transferors, or to the

estate of either transferor.” (Annexed hereto and made a part hereof as Movant’s Exhibit B is the Annuity Agreement).

24. I would call the Court’s attention, in particular to the provisions of paragraphs 4 and 5 of the agreement fully set forth as follows:

4. If the Transferors request to sever the joint nature of the annuity provided by this Agreement, the Transferee, in its discretion, shall create two (2) separate annuities, one for each Transferor payable to each Transferor until the death of such Transferor. The Transferee shall recalculate the annuity payments based upon a sum of one-half of any unpaid balance then owing under this Agreement. The Transferee shall use the same rate of interest and the same annuity factors to recalculate the annuities that are used in this Agreement and the Transferee shall use the separate life expectancies of each Transferor. Transferee shall further attempt, as far as possible, to conform each annuity with existing tax laws and rulings for the best tax treatment for each Transferor and the Transferee. The Transferors shall equally bear the coast associated with severing the annuity hereunder and creating separate annuities.

5. It is an express term and condition of this Agreement that the rights of, income or amounts payable hereunder to the Transferors shall not be subject to assignment, pledge, hypothecation, mortgage, pledge, attachment, execution, judgment, garnishment, anticipation or other disposition or impairment.

25. Currently a majority of the assets of the Trust are being held in cash in either low or non-interest bearing accounts. The following is my current understanding, after a review of bank and brokerage statements and conversations with the receiver of the assets held in the Trust:

RMR Wealth Management

RMR-069671

Cash	\$186,905
------	-----------

Securities	
------------	--

922 Bristol Meyers	36,621
3800 CIFIC Corp	29,754
2500 Citicorp	116,650
1250 Proshares (TBT)	74,662
680 Mead Johnson	55,141

---

\$312,829

Pine Street Capital, LP \$183,533\*

\*Unconfirmed estimate by management

Total assets at RMR Wealth Mgt. \$683,267

Cash held by Receiver William H. Brown

Prior distributions from Pine St. Capital, LP \$435,438

**Total securities and deposits: \$1,118,705**

Other Assets:

Kinderhook Bank

Account 040 00004 02 #384651

As of 4/30/2013 \$1,455,485\*

\*Note: The Receiver withdrew \$100,000 on 12/28/2012 to pay real estate taxes and income taxes. Income taxes, just recently paid, included interest and penalties of approximately \$8,000 due to late payment. The payment was for approximately \$30,000.

Real estate taxes, including arrearages, could have approached \$25,000. Thus, a balance of \$45,000 may be available.

Kinderhook Bank

Account 040 00004 01 #2111306

As of 3/29/2013 \$36,118

Sacandaga Camp Property 600,000

---

Total other assets: \$2,091,603

---

**Total Assets: \$3,210,308**

26. If the Trust continues to remain unmanaged and otherwise uninvested, its value, (in real terms) is likely to diminish.

27. Currently the only asset in the Trust that I am confident is appreciating in excess of the rate of inflation is in fact the Sacandaga property. (I have attached for the Court's information two recent articles commenting on the strengthening housing market both generally and in New York in particular. I have also attached a copy of an appraisal which was prepared for the Trust prior to the purchase of the real property). (Attached as Exhibits C, D, and E).

28. When the Trust was created in 2004, and entered into the Private Annuity agreement with my parents, the value of the annuity payments were derived from a forecasted annual after tax rate of return on the Trust of 4.60%. Given historical market returns over the past 25 years, it was anticipated that the Trust would in fact grow at a higher rate of return than 4.60%. Actuarial tables give an estimated life expectancy for

my mother and father that would result in annuity payments ceasing in 2029. The below table shows the value of the Trust in each of the 13 years that would follow the first annuity payment in September of 2015, at various annual rates of return since the Trust inception in 2004.

Value of Trust with Private Annuity									
		Annual After Tax Return							
		5%	6%	7%	8%	9%	10%	11%	12%
Year that Annuity Payments Cease	2016	\$ 7,496,241	\$ 8,458,306	\$ 9,525,564	\$ 10,708,371	\$ 12,017,988	\$ 13,466,659	\$ 15,067,678	\$ 16,835,473
	2017	\$ 7,381,121	\$ 8,475,872	\$ 9,702,421	\$ 11,075,108	\$ 12,609,675	\$ 14,323,393	\$ 16,235,190	\$ 18,365,798
	2018	\$ 7,260,245	\$ 8,494,492	\$ 9,891,659	\$ 11,471,185	\$ 13,254,614	\$ 15,265,800	\$ 17,531,129	\$ 20,079,762
	2019	\$ 7,133,325	\$ 8,514,230	\$ 10,094,143	\$ 11,898,948	\$ 13,957,597	\$ 16,302,448	\$ 18,969,622	\$ 21,999,401
	2020	\$ 7,000,060	\$ 8,535,152	\$ 10,310,801	\$ 12,360,931	\$ 14,723,849	\$ 17,442,761	\$ 20,566,348	\$ 24,149,397
	2021	\$ 6,860,131	\$ 8,557,329	\$ 10,542,625	\$ 12,859,874	\$ 15,559,063	\$ 18,697,105	\$ 22,338,714	\$ 26,557,393
	2022	\$ 6,713,205	\$ 8,580,837	\$ 10,790,677	\$ 13,398,732	\$ 16,469,447	\$ 20,076,884	\$ 24,306,041	\$ 29,254,348
	2023	\$ 6,558,934	\$ 8,605,755	\$ 11,056,092	\$ 13,980,698	\$ 17,461,765	\$ 21,594,640	\$ 26,489,773	\$ 32,274,938
	2024	\$ 6,396,948	\$ 8,632,168	\$ 11,340,087	\$ 14,609,222	\$ 18,543,392	\$ 23,264,172	\$ 28,913,716	\$ 35,657,999
	2025	\$ 6,226,864	\$ 8,660,166	\$ 11,643,961	\$ 15,288,028	\$ 19,722,366	\$ 25,100,657	\$ 31,604,293	\$ 39,447,026
	2026	\$ 6,048,275	\$ 8,689,844	\$ 11,969,106	\$ 16,021,138	\$ 21,007,446	\$ 27,120,791	\$ 34,590,833	\$ 43,690,738
	2027	\$ 5,860,757	\$ 8,721,303	\$ 12,317,012	\$ 16,812,897	\$ 22,408,185	\$ 29,342,938	\$ 37,905,893	\$ 48,443,694
	2028	\$ 5,663,862	\$ 8,754,649	\$ 12,689,270	\$ 17,667,997	\$ 23,934,989	\$ 31,787,300	\$ 41,585,609	\$ 53,767,005
	2029	\$ 5,457,123	\$ 8,789,996	\$ 13,087,587	\$ 18,591,505	\$ 25,599,206	\$ 34,476,098	\$ 45,670,094	\$ 59,729,114

29. In reality the Trust did not grow at the expected rate from 2004 to the present. Using the same analysis, but beginning growth of the Trust at today's current value, the below table illustrates the expected value of the Trust in the same 13 year period at various annualized rates of return.

Value of Trust with Private Annuity									
		Annual After Tax Return							
		5%	6%	7%	8%	9%	10%	11%	12%
Year that Annuity Payments Cease	2016	\$ 3,226,401	\$ 3,333,596	\$ 3,442,833	\$ 3,554,132	\$ 3,667,510	\$ 3,782,988	\$ 3,900,585	\$ 4,020,320
	2017	\$ 2,897,789	\$ 3,043,680	\$ 3,193,900	\$ 3,348,530	\$ 3,507,654	\$ 3,671,355	\$ 3,839,717	\$ 4,012,826
	2018	\$ 2,552,746	\$ 2,736,369	\$ 2,927,541	\$ 3,126,480	\$ 3,333,411	\$ 3,548,558	\$ 3,772,154	\$ 4,004,433
	2019	\$ 2,190,452	\$ 2,410,619	\$ 2,642,537	\$ 2,886,667	\$ 3,143,486	\$ 3,413,482	\$ 3,697,159	\$ 3,995,033
	2020	\$ 1,810,042	\$ 2,065,324	\$ 2,337,582	\$ 2,627,668	\$ 2,936,467	\$ 3,264,898	\$ 3,613,914	\$ 3,984,505
	2021	\$ 1,410,612	\$ 1,699,311	\$ 2,011,281	\$ 2,347,950	\$ 2,710,817	\$ 3,101,456	\$ 3,521,513	\$ 3,972,714
	2022	\$ 991,211	\$ 1,311,338	\$ 1,662,138	\$ 2,045,854	\$ 2,464,859	\$ 2,921,670	\$ 3,418,947	\$ 3,959,507
	2023	\$ 550,839	\$ 900,086	\$ 1,288,556	\$ 1,719,590	\$ 2,196,764	\$ 2,723,905	\$ 3,305,100	\$ 3,944,716
	2024	\$ 88,449	\$ 464,160	\$ 888,823	\$ 1,367,225	\$ 1,904,541	\$ 2,506,363	\$ 3,178,729	\$ 3,928,150
	2025	\$ (397,060)	\$ 2,077	\$ 461,109	\$ 986,671	\$ 1,586,018	\$ 2,267,067	\$ 3,038,457	\$ 3,909,596
	2026	\$ (906,845)	\$ (487,730)	\$ 3,454	\$ 575,673	\$ 1,238,827	\$ 2,003,842	\$ 2,882,755	\$ 3,888,816
	2027	\$ (1,442,119)	\$ (1,006,926)	\$ (486,236)	\$ 131,795	\$ 860,390	\$ 1,714,294	\$ 2,709,926	\$ 3,865,541
	2028	\$ (2,004,157)	\$ (1,557,274)	\$ (1,010,204)	\$ (347,594)	\$ 447,893	\$ 1,395,792	\$ 2,518,086	\$ 3,839,474
	2029	\$ (2,594,297)	\$ (2,140,642)	\$ (1,570,851)	\$ (865,333)	\$ (1,729)	\$ 1,045,439	\$ 2,305,143	\$ 3,810,279

30. It is obvious from the above analysis that when my parents created the Trust for the benefit of my sister and me in 2004, the Private Annuity agreement, while

benefiting my parents, was also a benefit to the value of the Trust. The ensuing economic collapse in 2008, coupled with the freezing of the Trust by the SEC destroyed the ability to earn market returns that would allow the Private Annuity to be beneficial to the Trust.

31. Even if the SEC were to somehow acquire a judgment against my mother in her capacity as a relief defendant and successfully overcome paragraph 5 of the agreement between the Trust and the Transferors the Trust would be able to maintain the property until 2022 which it is my current intention to do.

32. In 2011 I prepared a report for the receiver making him aware of my understanding of the Trust's assets at that time and providing my recommendations as to how to proceed. (A copy of this report is attached and annexed hereto and made a part hereof as Movant's Exhibit F).

33. My estimate of the value of the real property at that time, was based on my review of the appraisal submitted to the Trust at the time of the purchase of the real property.


34. To the best of my knowledge the position in the account remains unchanged other than the accumulation of a small amount of interest and the maturation of some of the Pine Street Capital account into cash.

35. I do not believe the receiver ever received any understanding from the Court concerning the investment of trust funds and as a result these funds have remained idle.

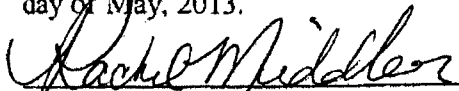
WHEREOF, I would urge the Court to vacate the Order to the receiver to sell the Sacandaga Lake Property, currently owned by the Trust and to allow the Trust to continue to own the property until this matter is finally decided. In addition I would urge

the court to direct the receiver to, upon the advice and consent of the trustee, diversify  
and invest the funds in the Trust in compliance with EPTL § 11-2.3.

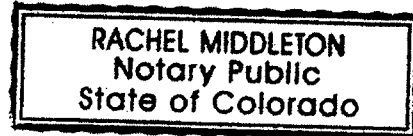
Dated: May 21, 2013

  
\_\_\_\_\_  
Geoffrey R. Smith

Sworn to before me this 21<sup>st</sup>  
day of May, 2013.

  
\_\_\_\_\_  
Notary Public - State of Colorado  
Pitkin County

*My Commission Expires: 3/1/2016*



# **EXHIBIT A**

## DECLARATION OF TRUST

THIS INDENTURE is made the 4<sup>th</sup> day of AUGUST, 2004, between David L. Smith and Lynn A. Smith, residing at 2 Rolling Brook Drive, Saratoga Springs, New York 12866, (herein called the "Donors"), and Thomas Urbelis, with offices at 6 Eastman Road, Andover, Massachusetts 01810-4009 (the "Trustee") and shall be known as the **DAVID A. & LYNN A. SMITH IRREVOCABLE TRUST U/A DATED AUGUST 4, 2004.**

### WITNESSETH:

The Donors hereby transfer and deliver unto the Trustee the property described in Schedule A, attached hereto, the receipt of which is hereby acknowledged by the Trustee. The Donors have two (2) children, Geoffrey R. Smith and Lauren T. Smith. This Trust is created for the benefit of the Donors' children and their issue. - not attached

**TO HAVE AND TO HOLD** such property unto the Trustee, **IN TRUST, NEVERTHELESS**, as follows:

**FIRST:** During the lives of the Donors, the Trustee shall manage, invest and reinvest the trust estate to satisfy all obligations of the Trust and the Trust shall be divided and managed in two (2) separate and equal shares for each child and any issue of such child (the "Beneficiaries") and collect the income thereof and, until the death of the second Donor to die, shall distribute so much of the net income and principal as the Trustee shall determine in his discretion to provide for the education, health, support and maintenance of the Beneficiaries from the each child's respective trust share, taking into account any other resources of the Beneficiaries and the tax status of each Beneficiary. Consistent with these provisions the Trustee shall have the power (i) to sprinkle the current income and/or the principal to one or more Beneficiaries, from each such Beneficiary's respective share, as the Trustee shall deem necessary to provide for the education, health, support and maintenance of each Beneficiary and (ii) in each tax year to make the trust either a "simple" trust or "complex" trust under applicable federal and state tax laws.

During the lives of the Donors, the Trustee is authorized, in his discretion, at any time to terminate each trust share and thereupon to pay over and distribute the principal thereof, and any income then accrued or held, to each child, or if such child is predeceased, to the issue of such child in equal shares, and if there are no issue, then to other child, and if such other child is predeceased, then to the issue of such other child in equal shares, although it is the Donor's desire this trust be administered as herein provided.

If in any year a contribution is made to the trust estate by the Donors, the Trustee shall promptly notify each of the Beneficiaries, or, if any such person shall be a minor, his or her parent or guardian other than the Donors, of such contribution, and each such beneficiary, or such parent or guardian acting on a Beneficiary's behalf during such Beneficiary's minority, shall have the right at any time within thirty (30) days of receipt of such notice to withdraw from the trust estate an amount not in excess of the lesser of the following: (i) such Beneficiary's pro rata share of the amount of such contribution and (ii) the annual exclusion available to the Donors for United States Federal gift tax purposes with respect to the Beneficiary's pro rata share of such contribution, after taking into account any other gifts made by the Donors to such person in that year. In satisfaction of such right of withdrawal, the Trustee may distribute to a Beneficiary any asset held in the trust estate (including any insurance policies or any interests in such policies or borrow against such policies), valued as of

the date of withdrawal. Such right of withdrawal shall not be cumulative with respect to any prior contributions made to the trust and, if such right of withdrawal is not exercised within such thirty (30) day period, it shall lapse, provided that the amount with respect to which the right of withdrawal shall lapse for any Beneficiary in any year shall not exceed the maximum annual amount with respect to which a power of appointment may lapse and not be considered a release of such power for United States Federal gift tax purposes under Section 2514 of the Internal Revenue Code of 1986, or any provision successor thereto, as in effect for that year (hereinafter, the "maximum lapse amount"), and if any Beneficiary has a right of withdrawal in any year which shall exceed the maximum lapse amount, the power for the beneficiary for that year shall lapse only to the extent of the maximum lapse amount, and any excess withdrawal right shall continue to be exercisable by the Beneficiary, but shall lapse, in the next succeeding year, or years, to the extent of the maximum lapse amount for such year, on the second day of such year. The right of withdrawal hereunder shall be exercised by written notice delivered to the Trustee. The Donors may instruct the Trustee that any Beneficiary shall not have a withdrawal right as described in this article with respect to any contribution during the calendar year, and to disregard a demand by any Beneficiary with respect to any contribution made by the Donors. Each right of withdrawal granted hereunder is personal to the person holding such right and shall expire if he or she dies, is adjudicated bankrupt, shall take advantage of any of the provisions of the bankruptcy act or of any federal or state statute relating to insolvency, shall make an assignment for the benefit of his or her creditors, or shall be adjudicated an incompetent.

**SECOND:** Upon the death of the second Donor to die, the Trustee shall collect, as principal of the trust estate, the net proceeds of any insurance policies then included in the trust estate and payable to the Trustee, or any other benefits or proceeds payable to the Trustee as beneficiaries, after deduction of all charges against such policies or benefits by way of advances, loans, premiums or otherwise, and any amounts so collected shall be divided equally and added to each share for each child of the Donors. The Trustee may use any part of the income or principal of the trust estate to meet expenses incurred in collecting any such proceeds or benefits. If, however, the Trustee in their discretion shall determine that the income and principal on hand in the trust estate may not be sufficient to meet any expenses and obligations to which the Trustee may be subjected in any litigation to enforce payment of any insurance policy, benefits or proceeds then included in the trust estate, then the Trustee shall not be required to enter into or maintain any litigation to enforce payment of any such amounts until he shall have been indemnified to his satisfaction against all such expenses and obligations. The Trustee is authorized to compromise and adjust any such claims, upon such terms and conditions as they may deem advisable, and the decision of the Trustees in this respect shall be binding and conclusive upon all persons then or thereafter interested in the trust estate.

**THIRD:** Upon the death of the second Donor to die, the Trustee shall administer and distribute the each trust share hereunder, including the remaining principal of the such trust share, and any income, to the child for whom such trust share is held, or if such child is predeceased, to the issue of such child in equal shares, and if there are no issue, then to other child, and if such other child is predeceased, then to the issue of such other child in equal shares.

**FOURTH:** If any person whose life measures the duration of a trust hereunder and any remainderman of such trust shall die under such circumstances that there is reasonable doubt as to who died first, then such person whose life measures the duration of such trust shall be conclusively

deemed to have survived such remainderman for the purposes of all provisions of this Indenture.

**FIFTH:** If any principal or income of any trust created hereunder shall become payable to or be set apart to be distributed to a minor, the Trustee shall have absolute discretion either to pay over such principal or income at any time to the guardian of the property of such minor appointed in any jurisdiction, or to any custodian for such minor under the Uniform Transfers to Minors Act of any state (including the Trustee or a custodian designated by the Trustee) or to retain the same for such minor during minority. In paying over any property to a custodian, the Trustee may direct that the property be retained until the beneficiary reaches the age of twenty-one. In case of retention, the Trustee may apply such principal or income, and any income therefrom, to the support, maintenance, education or other benefit of such minor, irrespective of the other resources of such minor or of his or her parents or guardians. Any such application may be made either directly or by payments to such guardian of the property or parent of such minor or to the person with whom such minor may reside, in any case without requiring any bond, and the receipt of any such person shall be a complete discharge to the Trustee, who shall not be bound to see to the application of any such payment. In holding any property for any minor, the Trustees shall have all the powers and discretion hereinafter conferred.

**SIXTH:** Without limitation of the powers conferred by statute or general rules of law, the Trustee is specifically authorized and empowered with respect to any property held by them:

(1) To retain any property transferred to any trust hereunder, as long as the Trustee in his absolute discretion shall deem it advisable to do so;

(2) To invest any funds in any stocks, bonds, limited partnership interests or other securities or property, real or personal (including any securities of or issued by any corporate trustee or investment in any common or commingled fund or funds maintained by any corporate trustee), notwithstanding that such investments may not be of the character allowed to trustees by statute or general rules of law, and without any duty to diversify investments, the intention hereof being to give the broadest investment powers and discretion to the Trustees;

(3) To sell (at public or private sale, without application to any court) or otherwise dispose of any property, whether real or personal, for cash or on credit, in such manner and on such terms and conditions as the Trustee may deem best, and no person dealing with the Trustee shall be bound to see to the application of any moneys paid;

(4) To manage, operate, repair, improve, mortgage and lease for any period (whether expiring before or after the termination of any trust created hereunder) any real estate;

(5) Except to the extent prohibited by law, to cause any securities to be registered in the names of the Trustee's nominees, or to hold any securities in such condition that the Trustee will pass by delivery;

(6) To employ such attorneys, accountants, custodians, investment counsel, real estate consultants and other persons as the Trustee may deem advisable in the administration

of any trust hereunder, and to pay them such compensation as the Trustee may deem proper, without any diminution of or offset against the commissions to which the Trustee shall be entitled by law;

(7) To maintain margin accounts with one or more individuals, partnerships, associations, banks or other corporations on such terms and conditions as the Trustee in his discretion shall determine, and to conduct such transactions in such accounts as he shall so determine, and to pledge all or any portion of any trust hereunder as security for the payment of the respective debit balances in such accounts;

(8) To engage in any arbitrage transactions and transactions involving short sales, and to buy or sell or write options for the purchase or sale of securities or other property (commonly known as puts and calls), whether covered or uncovered;

(9) To use any securities or brokerage firm in the purchase or sale of stocks, bonds or other securities or property for the account of any trust hereunder and to pay such firm such brokerage commissions or other compensation in connection therewith as the Trustees may deem proper, notwithstanding that the Trustee may be members of, or otherwise connected with, such firm, and without diminution of or offset against the commissions to which the Trustee may be entitled by law;

(10) To purchase property from the Donors in exchange for a private annuity payable to the Donors;

(11) To distribute any income or principal of any trust hereunder in cash or in kind and, if in kind, in a fashion other than pro rata, having regard in such event to the characteristics, including tax characteristics, of the property being distributed and to income, needs and tax status of the recipient;

(12) To borrow such amounts, from such persons (including the Trustee or any beneficiary of any trust hereunder) and for such purposes as the Trustee may deem advisable and to pledge any assets of any trust hereunder to secure the repayment of any amounts so borrowed;

(13) To lend such amounts, to such persons, for such purposes and upon such terms (whether secured or unsecured) as the Trustee may deem advisable;

(14) In general, to exercise all powers in the management of the trust estate which any individual could exercise in the management of property owned in his own right.

**SEVENTH:** Any trust estate held hereunder may be increased from time to time by the addition of such property as may be added to it by the Donors or by any other person with the consent of the Trustee.

**EIGHTH:** The Trustee is empowered to pay any taxes which may become payable from time to time with respect to the trust estate, or any transfer thereof or transaction affecting the same,

under the laws of any jurisdiction which the Trustee is advised may validly tax the same.

**NINTH:** (A) If the Trustee hereunder shall die or is unable or unwilling to act as trustee, then the Donors may appoint a Trustee, independent of the Donors. Any such appointment so made may be revoked by the maker thereof, by written instrument, duly executed and acknowledged, at any time prior to the happening of the event upon which it is to become effective, and a new appointment may be made as above provided. Upon the happening of the event upon which such appointment is to take effect and upon qualifying as hereinafter provided any successor Trustee so appointed shall become a Trustee hereunder, as though originally named herein.

(B) Any Trustee acting hereunder may resign and be discharged from any trust created hereunder by giving, personally or by mail, written notice of resignation, duly acknowledged, to the Donors, or if they shall not then be living, to the remaindermen of such trust (or if any income beneficiary shall be a minor, to either of his or her parents or to the guardian of his or her property). Such notice shall specify the date when such resignation shall take effect, which date (except as the persons entitled to such notice shall otherwise consent) shall be at least thirty days after the service or mailing thereof.

(C) In case any Trustee at any time acting hereunder for any reason shall cease to act, the retiring Trustee or his or her personal representative, as the case may be, shall upon the effective date of his or her resignation or upon his or her death turn over the trust estate or any portion of it under his or her control to the Trustee who shall thereafter be acting hereunder, and shall execute and deliver all instruments which may be deemed necessary more effectively to vest title in such Trustee.

(D) Any successor Trustee appointed as above provided and then entitled to act shall qualify as such by delivering or mailing written acceptance of such trust, duly acknowledged, to any other Trustee then acting hereunder and to the income beneficiaries or, if any be minors, to their parent or the adult with whom they reside.

(E) The Trustee shall have sole authority to make decisions required or authorized by this Identure. Either Geoffrey R. Smith or Lauren T. Smith shall serve as co-trustee for the limited and express purpose of executing such documents or instruments to fulfill decisions and actions taken by the Trustee, in the absence of the Trustee to execute any such document or instrument.

**TENTH:** The Trustee at any time acting hereunder at any time may render an account of their proceedings to the income beneficiary of any trust during the accounting period (or, if such person shall have died during or after the accounting period, to his or her personal representative); provided, however, that if any person to whom an account would be so rendered shall be a minor, such account instead may be rendered to either of such minor's parents other than an accounting Trustee or the guardian of his or her property. If approved in writing by the parties to whom such account shall have been rendered as above provided, such account shall be final, binding and conclusive upon all persons who may then or thereafter have any interest in the trust estate. The Trustee also at any time may render a judicial account of his proceedings.

In an accounting or other proceeding in which all persons interested in any trust hereunder are required by law to be served with process, if a party to the proceeding has the same or a similar interest as a person under a disability, it shall not be necessary to serve process upon the person under a disability, it being the Donors' intention to avoid the appointment of a guardian ad litem wherever possible.

**ELEVENTH:** Except as otherwise expressly provided herein, all estates, powers, trusts, duties and discretion herein created or conferred upon the Trustee shall extend to any Trustee who at any time may be acting hereunder, whether or not named herein.

No bond or other security shall be required of any trustee hereunder in any jurisdiction.

**TWELTH:** This Declaration and the trust(s) created hereunder shall be irrevocable, shall take effect upon acceptance by the Trustee and in all respects shall be construed and regulated by law of the State of New York. No beneficial interest under this trust, whether income or principal, is subject to anticipation, assignment, pledge, sale, or transfer in any manner, and no beneficiary may anticipate, encumber, or charge such interest. Each beneficiary's interest, while in the possession of the Trustees will not be liable for or subject to the debts, contracts, obligations, liabilities, accounts and/or creditors of any beneficiary.

**THIRTEENTH.** (A) This article states the Donors' tax purposes in creating this trust, and all provisions of this trust shall be construed so as best to effect these purposes and to the extent required, the Trust shall be reformed to effect these overriding tax purposes and no Trustee shall exercise any discretion in a manner that may reasonably be expected to frustrate the accomplishment of any of these purposes:

(1) All gifts made to this trust shall be complete gifts of present interests for federal gift tax purposes.

(2) The assets of this trust shall be excluded from the Donors' gross estates for federal estate tax purposes.

(3) This trust shall be a separate taxpayer for federal income tax purposes. At no time shall this trust be deemed to be owned by the Donors for federal income tax purposes.

(B) The Trustee is authorized to grant to, or, if granted, to take away from, a Beneficiary by an instrument in writing, signed and delivered to the Beneficiary, the power to appoint, by will admitted to probate, any part or all of the principal of a trust share held for such Beneficiary. This power of appointment, if granted, shall be exercisable only by a specific reference thereto in the Beneficiary's will and shall not be deemed to have been exercised by any general residuary article contained therein.

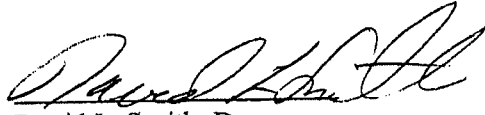
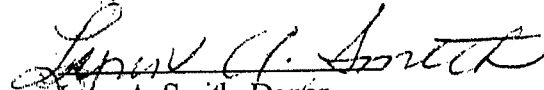
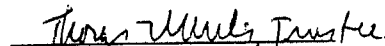
(C) The Trustee may exercise the authority granted to them hereunder for any reason whatsoever, whether to take advantage of any generation-skipping transfer exemption under Chapter 13 of the Internal Revenue Code, to reduce the overall transfer taxes payable upon a distribution or the death of a Beneficiary or for any other reason.

(D) Upon the death of any Beneficiary hereunder, if any estate, transfer, succession or other inheritance taxes, and any interest and penalties thereon, are imposed on such Beneficiary's estate by reason of the fact that any portion of the property held by the Trustee in trust hereunder is included in such Beneficiary's estate for Federal estate tax purposes and if no direction is made in such Beneficiary's will by specific reference to such trust concerning the payment of such taxes, and any interest and penalties thereon, then the Trustee shall pay from the principal of such trust an amount equal to such taxes, interest and penalties imposed by the United States or any state or subdivision thereof, so that such Beneficiary's estate shall not be required to bear any larger amount of estate, transfer, succession or inheritance taxes, and any interest and penalties thereon, than it would have had to pay if the property held in such trust were not included in such Beneficiary's estate.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument under seal  
as of the day and year first above written.



DANIEL S. BLAKE  
NOTARY PUBLIC - STATE OF NY  
QUALIFIED IN ERIE CO.  
MY COMMISSION EXPIRES 9-5-2005

  
David L. Smith, Donor  
Lynn A. Smith, Donor  
Thomas Urbelis, Trustee

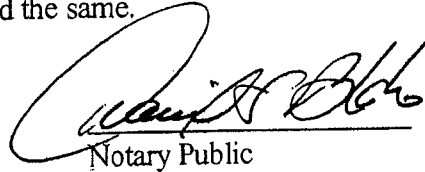
STATE OF NEW YORK )

SS:

COUNTY OF ERIE )

DANIEL S. BLAKE  
NOTARY PUBLIC - STATE OF NY  
QUALIFIED IN ERIE CO.  
MY COMMISSION EXPIRES 9-5- 2005

On this 4<sup>th</sup> day of August, 2004, before me personally came David A. Smith, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



Notary Public

STATE OF NEW YORK )

SS:

COUNTY OF ERIE )

DANIEL S. BLAKE  
NOTARY PUBLIC - STATE OF NY  
QUALIFIED IN ERIE CO.  
MY COMMISSION EXPIRES 9-5- 2005

On this 4 day of August, 2004, before me personally came Lynn A. Smith, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.



Notary Public

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

On this 9<sup>th</sup> day of August, 2004, before me, the undersigned notary public, personally appeared Thomas J. Urbelis, proved to me through satisfactory evidence of identification, which is personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged that he signed it voluntarily for its stated purpose.



Lori Ann Durrane Hawe/Notary Public  
My Commission Expires:



LORI ANN DURANNE HAWE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
October 10, 2008

# **EXHIBIT B**

**PRIVATE ANNUITY CONTRACT**

**BETWEEN**

**DAVID L. SMITH & LYNN A. SMITH, AS TRANSFERORS**

**AND**

**THE DAVID L. & LYNN A. SMITH IRREVOCABLE TRUST**

**U/A DATED AUGUST 31, 2004, TRANSFEREE**

\*\*\*\*\*

**CONTRACT TERMS**

**Effective Date: August 31, 2004**

**First Payment Date: September 26, 2015**

**Term of Contract: Last to Die of Transferors**

**Face Amount: \$4,447,000**

**Periodic Payment: \$489,932**

**Annuity Interest Rate: 4.6%**

### PRIVATE ANNUITY AGREEMENT

This Agreement is made as of this 31<sup>st</sup> day of August, 2004, among David L. Smith (Date of Birth: [REDACTED]) and Lynn A. Smith (Date of Birth: [REDACTED]) (the "Transferors"), residing at [REDACTED], Saratoga Springs, New York 12866, and the David L. & Lynn A. Smith Irrevocable Trust U/A Dated August 15, 2004 (the "Transferee"), with offices at 6 Eastman Road, Andover, Massachusetts 01810-4009.

#### Recitals

A. The Transferors are the owners of 100,000 shares of stock (the "Property") of Charter One Financial, Inc. and the Transferors desire to sell the Property to the Transferee to be relieved of the burden and risk associated with owning and managing the Property in order to receive investment income and a portion of the principal on a regular basis; and

B. The Transferors are willing to sell, assign and convey the Property to the Transferee, provided that the Transferee agrees to pay the Transferors certain regular sums as hereinafter set forth regardless of the amount of income or return the Transferee receives from the Property and the Transferee is willing to accept the Property and to assume ownership and management of the Property; and

C. Transferee agrees to annuitize the value of the Property in the belief that the transaction will result in a net gain, after payment of the obligations hereunder to the Transferors, for the Transferee and its beneficiaries, although the Transferors and the Transferee are aware and acknowledge that there are no guarantees that the annuity obligations can be met;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises of the parties set forth below, it is agreed as follows:

1. The Transferors hereby sell, assign and convey to the Transferee all right, title and interest in and to the Property. The Transferors and Transferee shall execute and deliver such documents and instruments to effectuate the foregoing sale, assignment and conveyance.

2. Transferee, in consideration of the sale, assignment and conveyance of the Property, hereby agrees to pay or cause to be paid to the Transferors the sum of \$489,932 per year, commencing on September 26, 2015, and shall continue on the 26<sup>th</sup> day of each September thereafter for and during the full term of the natural life of the last to die of the Transferors. Said payments are based on an annuity interest rate of 4.6%, per annum. At the death of the last to die of the Transferors, the Transferee shall cease making payments, and there shall be no further sums owned to the Transferors, or to the estate of either Transferor. In the event any payment under this Agreement is not made within ten (10) days of the date due, a late payment penalty of four percent (4%) of the amount past due shall be added to the amount owing and shall be payable by the Transferee.

3. Transferee shall hold full title to the Property, free and clear of all liens and encumbrances, and there shall be no collateral liens of any kind on the Property or any other assets of the Transferee to secure payment of the obligations to the Transferors under this Agreement.

4. If the Transferors request to sever the joint nature of the annuity provided by this Agreement, the Transferee, in its discretion, shall create two (2) separate annuities, one for each Transferor payable to each Transferor until the death of such Transferor. The Transferee shall recalculate the annuity payments based upon a sum of one-half of any unpaid balance then owing under this Agreement. The Transferee shall use the same rate of interest and the same annuity factors to recalculate the annuities that are used in this Agreement and the Transferee shall use the separate life expectancies of each Transferor. Transferee shall further attempt, as far as possible, to conform each annuity with existing tax laws and rulings for the best tax treatment for each Transferor and the Transferee. The Transferors shall equally bear the cost associated with severing the annuity hereunder and creating separate annuities.

5. It is an express term and condition of this Agreement that the rights of, income or amounts payable hereunder to the Transferors shall not be subject to assignment, pledge, hypothecation, mortgage, pledge, attachment, execution, judgment, garnishment, anticipation or other disposition or impairment.

6. (a) Neither party shall be responsible for breach of any of its obligations hereunder caused by "Force Majeure" or acts of God, such as, but not limited to, insurrection, fire, flood, strikes, lockouts, accident or labor unrest.

(b) All notices and demands upon the parties hereto permitted or required to be given hereunder shall be in writing and shall be deemed to have been duly and sufficiently given if delivered personally, sent by registered or certified mail, return receipt requested, in a properly stamped envelope addressed as set forth above.

(c) The captions contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(d) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which will be considered one and the same instrument.

(e) Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, successors and assigns.

(f) The interpretation, validity and performance of this Agreement shall be governed by the laws of the State of New York.

(g) The invalidity or unenforceability of any particular provision or provisions of this Agreement shall not affect the other provisions hereof and in the event any particular provision or provisions are determined to be invalid or unenforceable, this Agreement shall be construed in all respects as if such invalid or unenforceable provision or provisions were omitted.

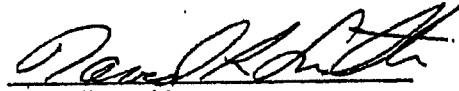
(h) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral.

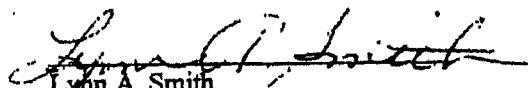
(i) This Agreement may not be modified or amended except in a writing signed

by each of the parties hereto.

(j) No waiver by either party of any condition or the breach of any covenant or provision contained herein, whether by conduct or otherwise, shall be deemed to be or construed as a further or continuing waiver of such condition or breach of any other provision hereof, and the failure of either party to require performance of any provision hereof shall not affect the right of that party to enforce the same.

In Witness Whereof, this agreement has been signed as of the date first set forth above.

  
David L. Smith

  
Lynn A. Smith

The David L. & Lynn A. Smith Irrevocable  
Trust U/A Dated August 4, 2004

By: \_\_\_\_\_  
Thomas Urbelis, Trustee

# **EXHIBIT C**



## Home price rise continues to pick up speed

By Chris Isgore @CNNMoney April 30, 2013: 11:31 AM ET



The S&P Case-Shiller home price index was up for the ninth straight month in February.

NEW YORK (CNNMoney)

The pace of home price increases continued to accelerate in February, according to a reading Tuesday that showed the biggest gain since near the height of the housing bubble.

The S&P Case-Shiller index of home prices in 20 major markets posted a 9.3% rise over the last 12 months. That's up from the 8.1% rise in January. It was the biggest 12-month gain in the index since May 2006, which was just one month after the index showed record-high home prices.

The index showed a 12-month decline in prices almost every month over a five-year period through May 2012. But every month since then has shown a gain in home prices, and each month's gain has been stronger than the one that came before.

### 10 most polluted cities

"Despite some recent mixed economic reports for March, housing continues to be one of the brighter spots in the economy," said David Blitzer, chairman of the index committee at S&P Dow Jones Indices.

Stan Humphries, chief economist for home price tracker Zillow, said there are signs in the market that the pace of increase started to slow in March.

"Regardless what data you look at, home values are clearly rising at an unsustainable pace," he said. He said the increases in the index need to be taken with a grain of salt, being distorted by the shift in transactions to private home sales rather than the foreclosure sales that had been dominating the market.

The housing recovery has been driven by a number of factors, including near **record-low mortgage rates**, a **drop in foreclosures** and **reduced unemployment**, all of which have helped lift both **new-home sales** as well as **sales of previously owned homes**. The rising home prices has helped bring back some buyers who had been reluctant to buy while prices were falling.

Mike Larson, real estate analyst at Weiss Research, said he's concerned that much of the increase is being driven by investors flooding into some markets to buy homes in order to rent them out, outbidding the potential homeowners who want to live in a home.

"Prices are not at bubblicious levels, but you're talking about a trend that can be destabilizing," he said.

Mark Vitner, senior economist with Wells Fargo Securities, said part of the reason for the sharp rise in prices is the comparison to depressed prices a year earlier. He said comparisons will become more difficult later this year, and the pace of increase should slow.

Home price increases **boost the overall economy**. Besides the jobs created by a **pick-up in construction** and home sales, rising prices mean fewer homeowners are underwater on their mortgages, owing more than the home is worth. That allows more **homeowners to refinance**, saving money they can spend on other things.

**Related: Builders hold lotteries for eager new homebuyers**

The Case-Shiller index showed the improvement in home prices is broad based, as every market posted an increase for the second straight month. The biggest increases came in Phoenix, a market hit hard by the bursting of the housing bubble, where

But prices were up more than 10% in half of the markets -- San Francisco, Las Vegas, Atlanta, Detroit, Los Angeles, Minneapolis, Miami, San Diego and Tampa all posted double-digit percentage gains, and Denver just missed that mark. New York posted the smallest gain, with only a 1.9% rise in prices.

Dean Baker, co-director of the Center for Economic and Policy Research, said some neighborhoods in Phoenix are actually seeing a 40% increase in prices over the last year, driven once again by property speculators. He said in many markets that were most hurt by the bursting of the housing bubble, there is a danger of new bubbles forming.

"The end of this round of speculation is not likely to be much prettier for the areas affected than the end of the last round," he said.

Even with the strong improvement in prices over the last 12 months, the index is still down 28% from the 2006 peak. ■

First Published: April 30, 2013: 9:02 AM ET

## You Might Also Like

by Taboola



**2/3 of America to Lose Everything because of This Crisis**  
*Money Morning*



**Billionaire Tells Americans to Prepare For "Financial Ruin"**  
*Moneynews*



**5 Richest Women In The U.S.**  
*Investopedia*



**Cars That Depreciate in Value The Most**  
*Investopedia*

## Recommended for You

**Dr. Doom: Buy stocks while you still can**

**Builders hold lotteries for eager new homebuyers**

**Inflation is very, very low. Time to worry?**

**Google's new products in 90 seconds**

## Around the Web

**Should you make extra mortgage payments?**  
*Banks.com*

**10 Things You Should Never Tell Your Boss**  
*Salary.com*

**Who Actually Earns \$400,000 Per Year?**  
*Moneyning.com*

[\[what's this\]](#)

© 2013 Cable News Network. A Time Warner Company. All Rights Reserved. Terms under which this service is provided to you. Privacy Policy. Ad choices

# **EXHIBIT D**

## New York State's housing market improves in 2013

NY counties reported fewer listings, higher median sales prices

Apr. 22, 2013

**ALBANY** — The number of closed home sales, median sales price and pending sales in New York increased in the first three months of the year compared to the same period in 2012, according to the state Association of Realtors.

The inventory of homes for sale reached its lowest point since January 2006, the group said Monday.

"It's simple economics at work in the statewide housing market," Duncan MacKenzie, the group's CEO, said in a statement. "As buyer demand increased and the housing supply decreased in the 2013 first quarter, the result was a nearly 4 percent growth in the statewide median sales price compared to the 2012 first quarter."

First quarter closed sales were 2 percent higher than in the first quarter of 2012, up to 18,251, and the number of homes for sale dropped 20 percent. Pending sales were up 11.5 percent between January through March, to a total of 24,843, while new listings fell 11 percent.

"We continue to project a strong spring market as buyers try to avoid further price increases, while taking advantage of historically low mortgage rates," said MacKenzie.

The 2013 first quarter median sales price was \$218,000, up 3.8 percent. In March alone, the median price was \$220,000, up 5.8 percent compared to March 2012.

In the Rochester area, home sales dropped 7.2 percent in the first quarter, according to a report this month by the Greater Rochester Association of Realtors Inc. The median sale price in the region increased 3.4 percent, to \$120,000.

Across the state, counties reported fewer listings and higher median sales prices.

Home prices were up in the Southern Tier between the first quarters of 2012 and 2013. In Broome County, prices increased 9.4 percent to a median of \$106,366; they were up 2.5 percent to \$101,500 in Chemung County. In Tompkins, the median sale price increased 5.8 percent to \$167,450.

(Page 2 of 2)

Thomas Reid, president of Greater Binghamton Association of Realtors, said the area has benefited from low interest rates and low home prices. The area is also rebounding from storms in 2011 that devastated parts of the region.

The median sales price fell 3.5 percent in Dutchess County — to a median of \$224,250. The prices were up in neighboring Ulster County, by 6.7 percent to \$190,000.

And Chemung diverged from most counties that had a decline in home sales. Homes for sale in Chemung was up 18 percent in the first quarter, from 323 to 380 homes.

Faye Guild-Nash, president of the Elmira-Corning Regional Association of Realtors, said the housing market has improved and the increase in listings probably includes ones that are pending sales.

"I think the market is staying stable here because we don't have a huge increase in the number of listings," she said.

The real estate market has improved in the lower Hudson Valley, according to a report last week from the Hudson Gateway Association of Realtors. Closing were up 8 percent during the first three months of the year, and home prices were up between 2 and 4 percent in Putnam, Westchester and Rockland counties.

# **EXHIBIT E**





*Thank you for the opportunity to present this Competitive Market Analysis to you.*

*I have prepared this market analysis in order to provide you with the most current information about what is happening in the market place.*

*Since this is a unique property consisting of 3 individual lots I have included comparable properties for both the main lot as well as the surrounding dwellings.*

*With this I have prepared a "Adjusted Market Analysis" for you that will more accurately indicate the "Price Point" in today's market place for your home. This analysis is based on the area in which the home is located, the size of the property and it's amenities.*

*This is intended to provide you with the information necessary to determine a indicated price range for your property in today's market.*

*Based on the attached comparable properties I would market this home with a combines worth of \$590,000 - \$615,000.*

*Should you have any questions regarding this Market Analysis please don't hesitate to give me a call.*

*I would be more than happy to go over it in detailed length with you.*

*Regards,*

*Leah Slocum*

*Licensed Associate Real Estate Broker*

*Realty USA*



Prepared by:

Leah Slocum

Lic. Associate R.E. Broker

Mobile: 518-331-8525

lslocum@realtyusa.com

RealtyUSA

231 Delaware Avenue

Delmar, NY 12054

www.LeahSlocum.com





## How Long Will It Take To Sell Your House?

### Product

The product is the property. If the property should show poorly or have major defects which cannot be or are not corrected, a sale may not take place until the defects are corrected or until the price is adjusted to compensate for them. Location plays a major role, but cannot be changed; therefore, only the price can be compensated for poor location.

### Timing

The timing is the condition of the real estate market at the time of the sale. It may be a seller's market or a buyer's market. Neither the seller or realtyusa can change the condition of the market at the time the property is for sale.

### Price

If the product has not sold after a reasonable length of time, but other similar properties have been sold, then the price may need to be reduced. If this is true and the price is not adjusted, then the price may delay or prevent a sale.

### Financing

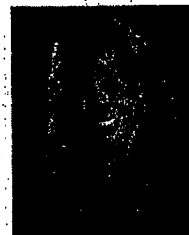
If the financing should cost too much, or if the seller requires more down payment than most people have who will buy in that area, then the financing may delay or prevent a sale.

### Competition

Every buyer makes their decision about which home to buy and how much it is worth based on the choice of other homes in the marketplace at the time they buy. The supply of other homes the buyer will compare with your home is constantly changing from week to week. The current competition always affects the buyer's opinion of your home. Since you can't control your competition in the marketplace, you must control how well you compete against the other properties available in your price range.

### Marketing

www.Thecooleyteam.Com and realtyusa's marketing is unique and personalized. But even the very best marketing has its limitations because marketing cannot overcome any of the first five factors if they are out of balance.



Leah Slocum  
Lic. Associate R.E. Broker

Mobile: 518-727-9561  
lslocum@realtyusa.com

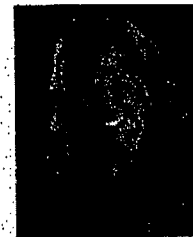
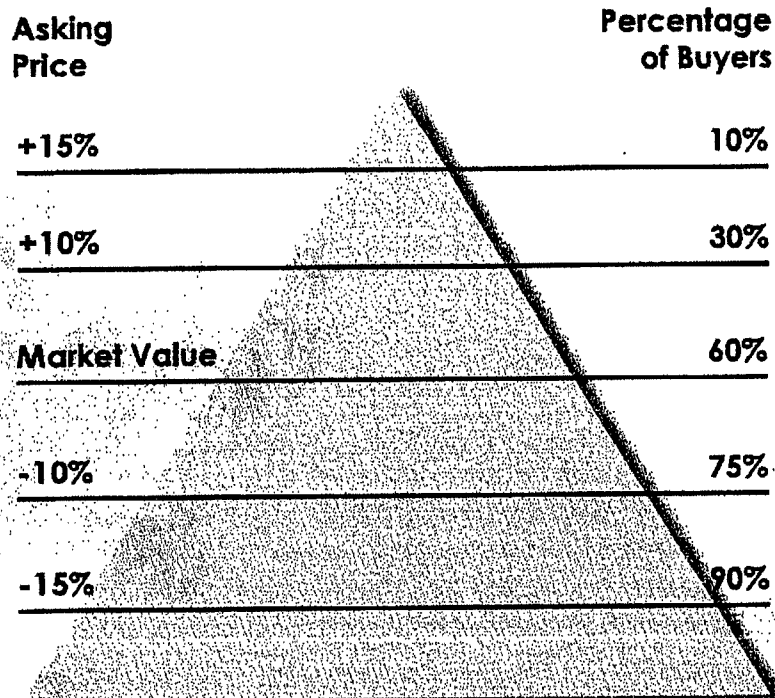
Cathy Cooley Team  
RealtyUSA  
231 Delaware Avenue  
Delmar, NY 12054

[www.TheCooleyTeam.com](http://www.TheCooleyTeam.com)





## The Importance of Intelligent Pricing



Leah Slocum  
Lic. Associate R.E. Broker

Mobile: 518-727-9561  
lslocum@realtyusa.com

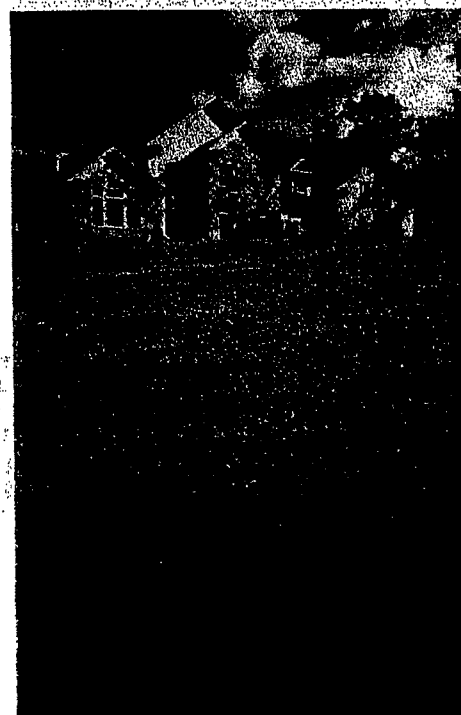
Cathy Cooley Team  
RealtyUSA  
231 Delaware Avenue  
Delmar, NY 12054

[www.TheCooleyTeam.com](http://www.TheCooleyTeam.com)



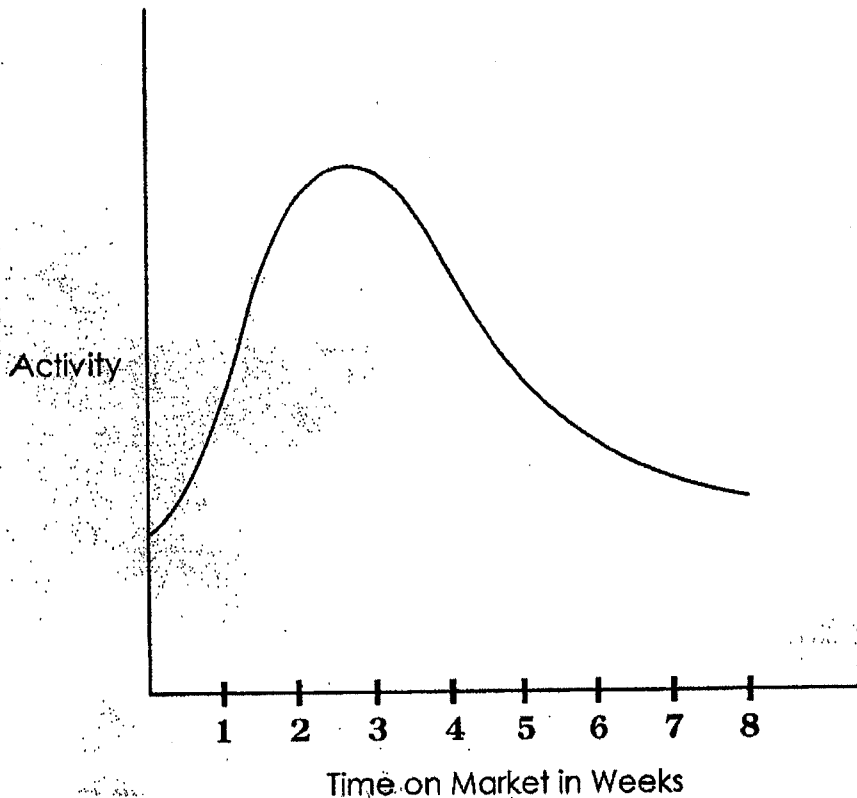
A competitive price will attract more prospective buyers.

As the triangle graph illustrates, more buyers purchase their properties at market value than above market value. The percentage increases even further when the price drops below market value. Therefore, if you price your property at market value, you are exposing it to a much greater percentage of prospective buyers and you are increasing your chances for a sale.





## Selling Price vs. Timing



Leah Slocum  
Lic. Associate R.E. Broker

Mobile: 518-727-9561  
lslocum@realtyusa.com

Cathy Cooley Team  
RealtyUSA  
231 Delaware Avenue  
Delmar, NY 12054

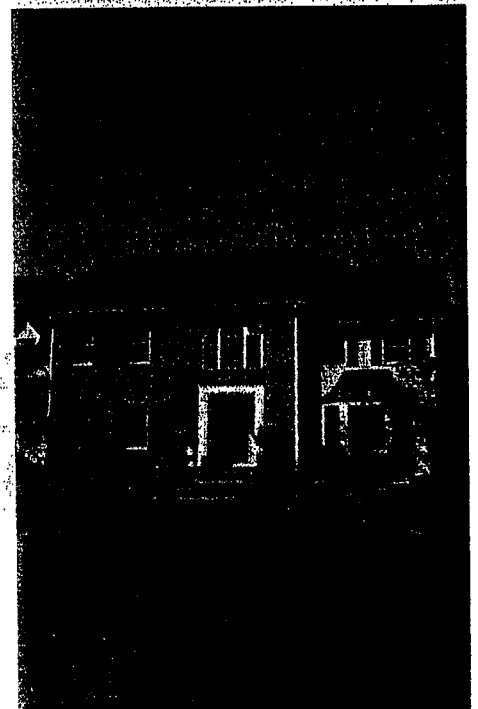
[www.TheCooleyTeam.com](http://www.TheCooleyTeam.com)



It is important we price your home properly from the start, while buyer interest is high.

Timing is extremely important in the real estate market. The above graph illustrates the importance of placing your property on the market at a realistic price and terms from the very beginning.

A property attracts the most excitement and interest from the real estate community and potential buyers when it is first listed; therefore, it has the highest chances of a sale when it is new on the market.





## The Value of a Real Estate Professional

Why hire a professional real estate agent to help sell your property? Do you have the time, experience, sources of information, and contacts to do the job yourself? Would it go as smooth as it could? Would it give you more personal time? Would you obtain a higher price? Here are just a few areas in which a professional real estate agent earns his or her commission:

### Pricing Considerations

A professional's insight in determining a pricing strategy for your property can keep you from missing an opportunity by undervaluing or wasting time by overpricing. Experience evaluating competing properties and market trends is a first ingredient for the best transaction experience.

### Marketing Expertise

#### Preparation

Your agent is skilled in recommending repairs or cosmetic work that have proven to minimize time on market and maximize both prospect interest and sales price.

#### Exposure to the public

Your agent will know best how to use flyers, open house days, and especially mailing to and meeting with ex-clients and other qualified buyers. The National Association of REALTORS® studies show that 82% of real estate sales are the result not of advertising, but of agent contacts through previous clients, referrals, friends and family, and personal contacts, including...

#### Exposure to other industry professionals

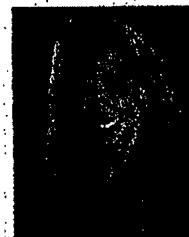
Your agent will utilize a Multiple Listing Service or other cooperative marketing networks. Once your property is listed, it is statistically likely the buyer will be the client of another agent associated with yours.

#### Advertising

Media and frequency. It takes experience to know what works in advertising. Ads generate phone calls to the real estate office but statistically have minimum effectiveness selling a specific property. Overexposure of a property in any media may give a buyer the impression the property is distressed or the seller is desperate.

#### Security

Working with a real estate agent ensures showings will be supervised. You can instruct un-chaperoned buyers to call your agent for an appointment so they can be prescreened, you will be safe, and you can do your final polish before the showing.



Leah Slocum  
Lic. Associate R.E. Broker

Mobile: 518-727-9561  
lslocum@realtyusa.com

Cathy Cooley Team  
RealtyUSA  
231 Delaware Avenue  
Delmar, NY 12054

[www.TheCooleyTeam.com](http://www.TheCooleyTeam.com)





## The Value of a Real Estate Professional

### Negotiating

#### Middleperson

Most buyers prefer to negotiate with someone they perceive as unbiased, not emotional, and professionally trained. They are more likely to express objections to agents with the hope of resolution, when they otherwise might move on to another property rather than talking to you directly.

#### Objectivity

Evaluate proposals privately without compromising your marketing position.

### Monitoring, Renegotiating and Closing or Settling

#### Overwhelming volume of steps

The process of appraisals, inspections, and financing involves a lot of possible pitfalls. There are many required legal forms and processes.

#### Experience reading and following escrow instructions

Instructions must be clear and complete. Your agent is the best person to objectively help you communicate these issues and move the transaction to closing (or settlement).

#### Inspectors and other professionals

Your agent can meet specialists and negotiate regarding repairs needed to complete your contract. Industry contacts provide resources for work persons in many areas with knowledge as to their historical skill and reliability.



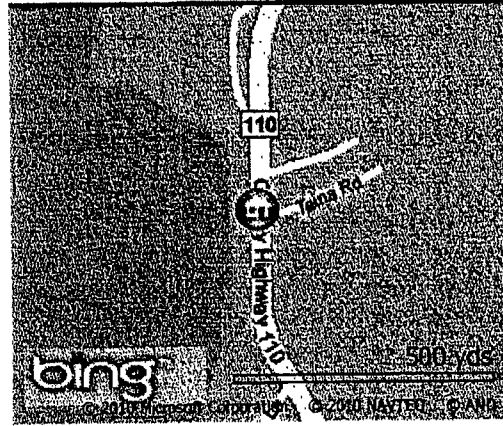
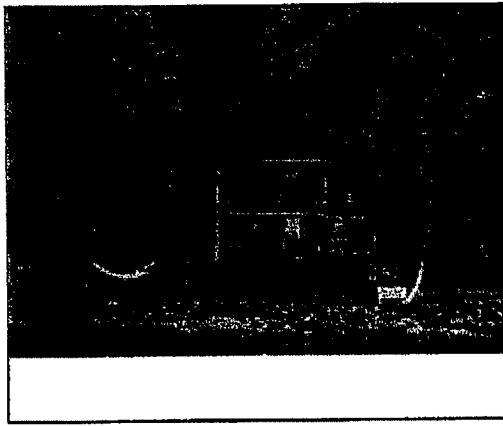
Leah Slocum  
Lic. Associate R.E. Broker

Mobile: 518-727-9561  
lslocum@realtyusa.com

Cathy Cooley Team  
RealtyUSA  
231 Delaware Avenue  
Delmar, NY 12054

[www.TheCooleyTeam.com](http://www.TheCooleyTeam.com)





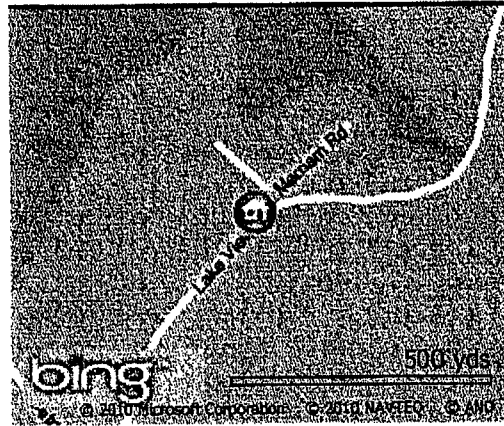
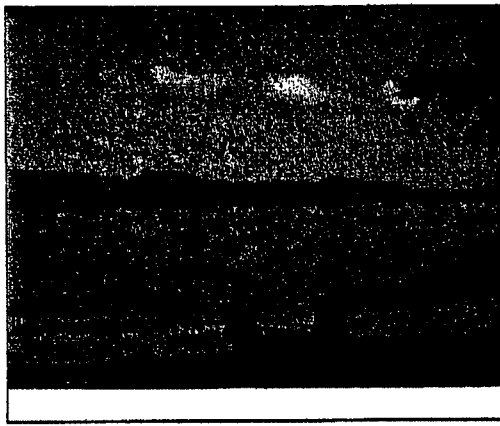
MLS#:	201020504	Status:	Active	Closing Date:	DOM:	57	List Price:	\$395,000
Address:	1389 COUNTY HIGHWAY 110				Total BR:	4	Orig Price:	\$395,000
City/Town:	Broadalbin	Village:			Total Rm:	6	Sold Price:	
County:	Fulton	Locale:			Total Bth:	1.1	Map:	NA
School District:	Broadalbin-Perth	Projected School:					Style:	Cottage
							Model:	

ROOM	B	1	2	3	FRP	Basement:	Crawl Space	Roof:	Asphalt Shingle
Living Room:	1					Attic:		Exterior:	Vinyl
Dining Room:	DNA					Laundry:	Area	Off St Parking:	Age:
Kitchen:	1					Garage:	0	Condition:	Excellent
Family Room:						Amenities:	Ceramic Tile, Vaulted Ceiling, Sliding Glass Door, Wood Floors		Age Desc:
Bedroom:	3	1							Handicap:
Sunroom:	1								No
						Interior Features:			Fireplaces:
									Woodstoves:
									1
Full Bath:	0	1	0	0					Acres:
Partial Bath:	0	1	0	0		Exterior Features:	Deck, Shed		Survey:
Kitchen Type:	Eat In					Appliances:	Range w/Oven, Refrigerator, Dishwasher, Microwave, Washer & Dryer		Above Gr SqFt:
						Features:			1264
						Lot:	64x126		Desc:
						Description:	View, Landscaped, Lake Front, Water View		Estimated
Remarks:	Enjoy sunsets over the Sacandaga Lake with this newly remodeled year round lakeside home. This home features 4 bedrooms, 1 1/2 baths, kitchen with Italian imported cabinets with tumbled marble backsplash, large sunroom, and living room with a wood stove that overlooks the lake. Large deck and two levels of lawn for entertaining. 80' of lakeside with a level, sandy lake. From Amsterdam, follow Route 30 S. Continue on Co Rt 155 thru village of Broadalbin. Rd turns into Co Hwy 110. House is 2 miles on Left.								
Directions:									

UTILITIES			ANNUAL TAXES			OFFERING TERMS		
Heat System:	Hot Air, Baseboard		General:	\$		HOA:		Assum Mtg:
Heat Fuel:	Electricity, Liquid Propane		School:	\$		HOA Fee:	\$	Balance:
Fuel Costs:			Village:	\$		HOA Period:		Rate:
Cooling:	Central Air		Total:	\$5584	Estimated	HOA Incl:		
Water:	Dug Well	Sewer: Septic	Spec Assess:	\$				
Virtual Tour URL:								

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

## Property Type 1F - Single Family Seller's Public Report



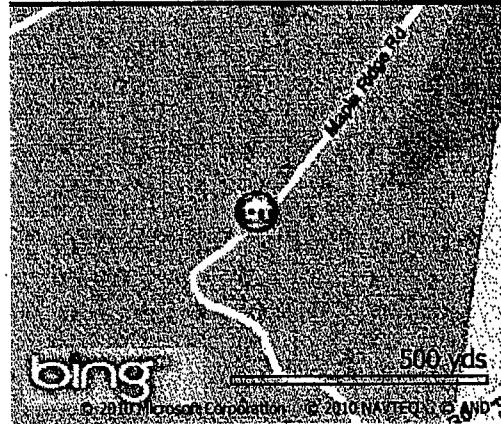
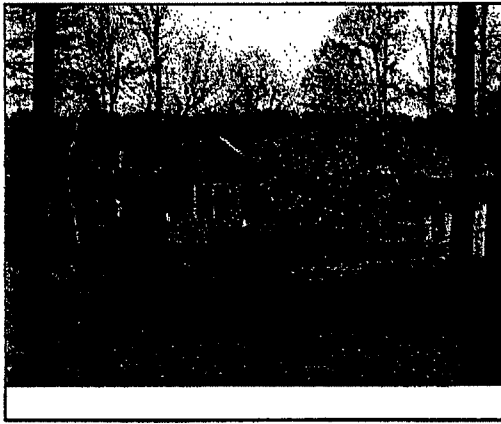
MLS#:	201020172	Status:	Active	Closing Date:	DOM: 63	List Price:	\$449,900
Address:	447 LAKEVIEW DR				Total BR: 3	Orig Price:	\$449,900
City/Town:	Broadalbin	Village:			Total Rm: 7	Sold Price:	
County:	Fulton	Locale:			Total Bth: 1.1	Map:	25
School District:	Broadalbin-Perth	Projected School:				Style:	Custom
						Model:	Timberfram

ROOM	B	1	2	3	FRP	Basement:	None	Roof:	Shingle/General
Living Room:		1				Attic:		Exterior:	Wood
Dining Room: CDR		1				Laundry:		Off St Parking:	Age: 0
Kitchen:		1				Garage:	0	Condition:	Superior
Family Room:						Amenities:	Sliding Glass Door, Wood Floors		Age Desc: Actual
Bedroom:			3						Handicap: No
						Interior Features:	High Speed Internet Acc, Gran/Solid Surf Counters		Fireplaces:
Full Bath:	0	0	1	0					Woodstoves:
Partial Bath:	0	1	0	0		Exterior Features:	Outbuilding		Acres: 0.800
									Survey:
Kitchen Type:	Working Only					Appliances:	Some/All Negotiable		Above Gr SqFt: 0
						Features:			Desc: Estimated
						Lot:			Below GR SqFt:
						Description:	Treed/Wooded, Landscaped, Lake Front, Water		
Remarks:	Stunning Adirondack masterpiece! Buy "The Great Pine Camp" new construction custom timber frame home with your own private 100' sandy beach on the Great Sacandaga Lake. HUGE lakeside lot with stunning mountain and lake views. Share the nature trail and rock walls with deer and rabbits. The home has an open floor plan and features expensive "Rejuvenation brand"								
Directions:	County Highway 110 in Broadalbin to Lakeview								

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	Radiant	General:	\$	HOA:	Assum Mtg:
Heat Fuel:	Liquid Propane	School:	\$	HOA Fee:	Balance: \$
Fuel Costs:		Village:	\$	HOA Period:	Rate:
Cooling:		Total:	\$ 7500 Estimated	HOA Incl:	
Water:	Well Except Dug Sewer: Septic	Spec Assess:	\$		

Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



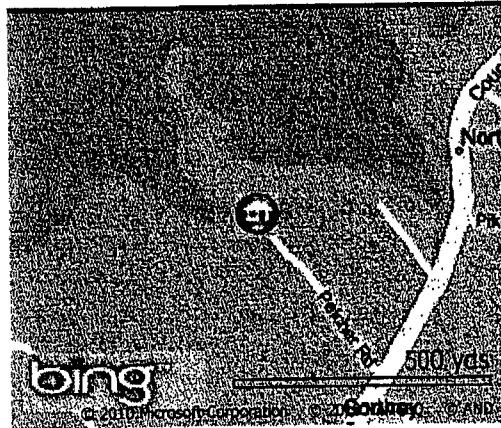
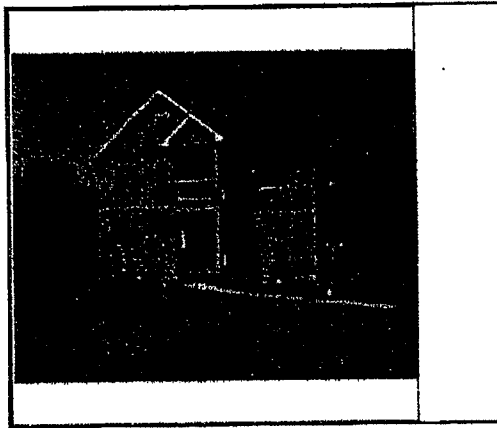
MLS#:	<b>201016505</b>	Status:	<b>Active</b>	Closing Date:	DOM: <b>106</b>	List Price:	<b>\$499,000</b>
Address:	<b>218 MAPLE RIDGE RD</b>			Total BR:	<b>5</b>	Orig Price:	<b>\$499,000</b>
City/Town:	<b>Gloversville</b>	Village:	<b>Mayfield</b>	Total Rm:	<b>14</b>	Sold Price:	
County:	<b>Fulton</b>	Locale:	<b>Great Sacandaga Lake</b>	Total Bth:	<b>3.0</b>	Map:	<b>185G8</b>
School District:	<b>Broadalbin-Perth</b>	Projected School:		Style:	<b>1 Family + In-L...</b>		
				Model:	<b>Ranch</b>		

ROOM	B	1	2	3	FRP	Basement:	<b>Apartment</b>	Roof:	<b>Metal</b>
Living Room:	<b>1</b>	<b>1</b>			<b>Gas ...</b>	Attic:	<b>Hatch</b>	Exterior:	<b>Vinyl</b>
Dining Room: DNA	<b>1</b>	<b>1</b>				Laundry:	<b>1st Floor</b>	Off St Parking:	<b>10</b>
Kitchen:	<b>1</b>	<b>1</b>				Garage:	<b>2 Detached</b>	Condition:	<b>Excellent</b>
Family Room:	<b>1</b>	<b>2</b>			<b>Gas ...</b>	Amenities:	<b>Ceramic Tile, Chair Rail, Crown Molding, Vaulted Ceiling, Skylight, Sliding Glass Door, Walkout Basement, Country Kitchen, Gourmet Kitchen, Built-In Cabinets, Walk-In Closet, Wood Floors, Wall to Cable Hook-Up, Paddle Fan, Water Softener, High Speed Internet Acc</b>	Age:	<b>16</b>
Bedroom:	<b>2</b>	<b>3</b>				Interior Features:		Age Desc:	<b>Estimated</b>
Full Bath:	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>				Handicap:	<b>No</b>
Partial Bath:	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		Exterior Features:	<b>Deck, Gas Grill, Gazebo, Lighting, Outbuilding</b>	Fireplaces:	
Kitchen Type:	<b>Eat In</b>					Appliances:	<b>Range w/Oven, Refrigerator, Dishwasher, Cook-top, Microwave, Freezer, Washer</b>	Woodstoves:	
						Features:		Acres:	<b>1.900</b>
						Lot:		Survey:	<b>No</b>
						Description:	<b>Dead End, Treed/Wooded, Privacy, Lake Front,</b>	Above Gr SqFt:	<b>4047</b>
Remarks:	<b>Ideal for year round or seasonal family compound (separate living areas). New roof in 2006. Large pressure treated deck (1761 ft) overlooking 165 ft of direct sandy beach frontage. SS kitchen with granite tiles. A 10x18 Gazebo, furnishings and dock are included. LA is owner.</b>								
Directions:	<b>RT 30N to a right on Woods Hollow Rd. Take first left onto Maple Ridge Rd. House is 3rd on right.</b>								

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	<b>Baseboard, Stove</b>	General:	<b>\$ 3223 Actual</b>	<b>Cash Only</b>	
Heat Fuel:	<b>Electricity, Liquid Propane</b>	School:	<b>\$ 4063 Actual</b>	HOA:	Assum Mtg:
Fuel Costs:		Village:	<b>\$</b>	HOA Fee:	<b>\$</b>
Cooling:	<b>Window A/C Unit</b>	Total:	<b>\$ 7286 Actual</b>	HOA Period:	Rate:
Water:	<b>Well Except Dug Sewer: Septic</b>	Spec Assess:	<b>\$</b>	HOA Incl:	

Virtual Tour URL:

The Information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



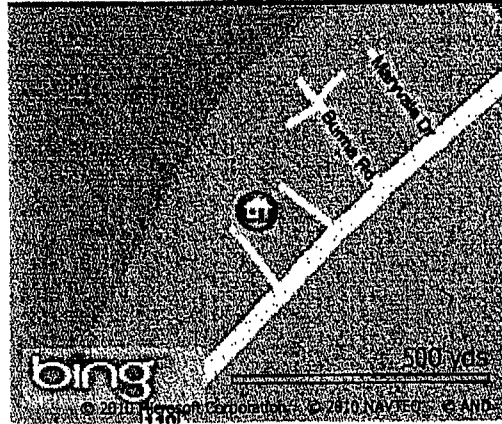
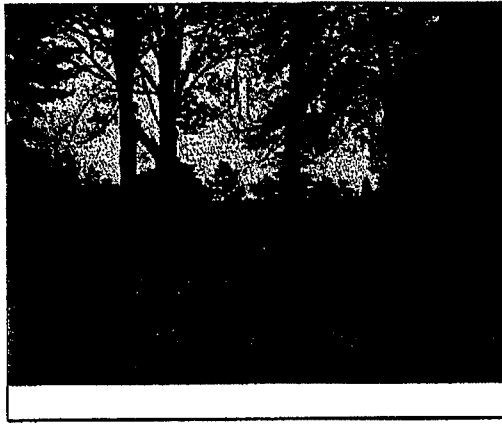
MLS#:	<b>201017243</b>	Status:	<b>Active</b>	Closing Date:	DOM: <b>99</b>	List Price:	<b>\$549,000</b>
Address:	<b>131 PELCHER RD</b>				Total BR: <b>2</b>	Orig Price:	<b>\$549,000</b>
City/Town:	<b>Broadalbin</b>	Village:			Total Rm: <b>7</b>	Sold Price:	
County:	<b>Fulton</b>	Locale:			Total Bth: <b>2.1</b>	Map:	<b>186E3</b>
School District:	<b>Broadalbin-Perth</b>	Projected School:				Style:	<b>Contemporary</b>
						Model:	<b>Lakefront</b>

ROOM	B	1	2	3	FRP	Basement:	<b>Full, Finished Area</b>	Roof:	<b>Asphalt Shingle</b>
Living Room:		<b>1</b>				Attic:	<b>Hatch</b>	Exterior:	<b>Stone, Vinyl</b>
Dining Room:	<b>CDR</b>	<b>1</b>				Laundry:	<b>Room, Basement</b>	Off St Parking:	<b>15</b> Age: <b>3</b>
Kitchen:		<b>1</b>				Garage:	<b>0 None</b>	Condition:	<b>Superior</b> Age Desc: <b>Estimated</b>
Family Room:		<b>1</b>				Amenities:	<b>Ceramic Tile, Crown Molding, Cathedral Ceiling, Atrium Door, Sliding Glass Door, Walkout Basement, Built-In Cabinets, Walk-In Closet, Whirlpool, Wood Floors, Wall to Wall Carpet Cable Hook-Up, Paddle Fan, High Speed Internet Acc, Gran/Solid Surf Counters</b>		Handicap: <b>No</b>
Bedroom:		<b>1</b>	<b>1</b>			Interior Features:			Fireplaces: <b>1</b>
den/office		<b>1</b>	<b>1</b>						Woodstoves:
Full Bath:		<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	Exterior Features:	<b>Lighting, Patio, Porch/Enclosed, Porch/Screened, Shed</b>		Acres: <b>1.200</b>
Partial Bath:		<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>				Survey:
Kitchen Type:	<b>Eat In</b>					Appliances:	<b>Range w/Oven, Refrigerator, Dishwasher, Microwave, Washer, Dryer</b>		Above Gr SqFt: <b>1700</b>
						Features:			Desc: <b>Estimated</b>
						Lot:			Below GR SqFt: <b>750</b>
						Description:	<b>Dead End, Level, Privacy, View, Landscaped, Water</b>		
Remarks:	<b>Immaculate contemporary w/100 ft. permitted and direct lakefront. Quiet, paved dead end road. Incredible water and mountain views through top of the line Anderson windows from every room. Your very own mooring is included. Master suite with steam shower, garden tub and private deck. Granite countertops in kitchen, wet bar and around fireplace. Brazilian cherry</b>								
Directions:	<b>From village of Broadalbin, take route 110 North (South Shore Rd. ) approximately 3 miles to Pelcher Rd. on left.</b>								

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	<b>Hot Air</b>	General:	<b>\$</b>	HOA:	<b>Assum Mtg:</b>
Heat Fuel:	<b>Liquid Propane</b>	School:	<b>\$</b>	HOA Fee:	<b>\$</b>
Fuel Costs:		Village:	<b>\$</b>	HOA Period:	<b>Rate:</b>
Cooling:	<b>None</b>	Total:	<b>\$ 000 Estimated</b>	HOA Incl:	
Water:	<b>Well Except Dug</b>	Spec Assess:	<b>\$</b>		
Sewer:	<b>Septic</b>				

Virtual Tour URL:

The Information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



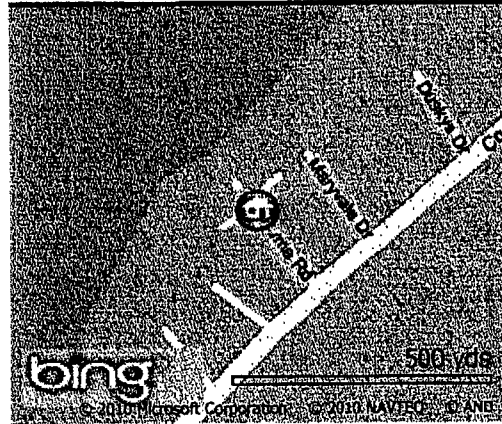
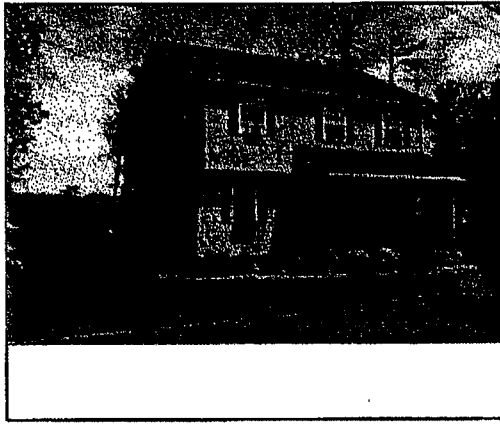
<b>MLS#:</b>	<b>201018688</b>	<b>Status:</b>	<b>Active</b>	<b>Closing Date:</b>	<b>DOM: 82</b>	<b>List Price: \$599,000</b>
<b>Address:</b>	<b>895 SOUTH SHORE RD</b>				<b>Total BR: 4</b>	<b>Orig Price: \$599,000</b>
<b>City/Town:</b>	<b>Broadalbin</b>	<b>Village:</b>			<b>Total Rm: 10</b>	<b>Sold Price:</b>
<b>County:</b>	<b>Fulton</b>	<b>Locale:</b>			<b>Total Bth: 2.1</b>	<b>Map: NA</b>
<b>School District:</b>	<b>Broadalbin-Perth</b>	<b>Projected School:</b>				<b>Style: Ranch</b>
						<b>Model:</b>

<b>ROOM</b>	<b>B</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FRP</b>	<b>Basement:</b>	<b>Slab</b>	<b>Roof:</b>	<b>Asphalt Shingle</b>
<b>Living Room:</b>	<b>1</b>					<b>Attic:</b>		<b>Exterior:</b>	<b>Brick</b>
<b>Dining Room: DNA</b>	<b>1</b>					<b>Laundry:</b>	<b>Room</b>	<b>Off St Parking:</b>	<b>Age: 46</b>
<b>Kitchen:</b>	<b>1</b>					<b>Garage:</b>	<b>2 Attached</b>	<b>Condition:</b>	<b>Excellent</b>
<b>Family Room:</b>						<b>Amenities:</b>	<b>Ceramic Tile, Bay Window, Built-In Cabinets, Walk-In Closet, Whirlpool, Wood Floors, Wall to Wall Carpet</b>		<b>Age Desc: Actual</b>
<b>Bedroom:</b>	<b>4</b>								<b>Handicap: No</b>
						<b>Interior Features:</b>			<b>Fireplaces: 1</b>
<b>Full Bath:</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>					<b>Woodstoves:</b>
<b>Partial Bath:</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>		<b>Exterior Features:</b>	<b>Deck, Garden, Lighting, Shed</b>		<b>Acres: 1.770</b>
<b>Kitchen Type:</b>	<b>Eat In</b>					<b>Appliances:</b>	<b>Range w/ Oven, Refrigerator, Dishwasher, Disposal, Microwave, Washer &amp; Dryer</b>	<b>Above Gr SqFt:</b>	<b>2000</b>
						<b>Features:</b>		<b>Desc:</b>	<b>Estimated</b>
						<b>Lot:</b>		<b>Below GR SqFt:</b>	
<b>Remarks:</b>	<b>Million Dollar Location! Sunsets on the Lake! 125' sandy beach on widest part of lake! House sits far off road, 500' of driveway w/ privacy on both sides. Almost 2 acres! Gorgeous landscaping. Quality workmanship. Hardwood floors, whirlpool tub, new master suite &amp; bath w/ granite countertops, walk-in closets. Family room w/ pellet stove. Lg bay window to enjoy lake! Walk in Rt. 29 to Fishhouse Rd. to left on Co. Hwy 110 (S. Shore Rd) House sits back in on right. Long driveway.</b>								
<b>Directions:</b>	<b>Rt. 29 to Fishhouse Rd. to left on Co. Hwy 110 (S. Shore Rd) House sits back in on right. Long driveway.</b>								

<b>UTILITIES</b>		<b>ANNUAL TAXES</b>		<b>OFFERING TERMS</b>	
<b>Heat System:</b>	<b>Hot Air</b>	<b>General:</b>	<b>\$ 2312</b>	<b>HOA:</b>	<b>Assum Mtg:</b>
<b>Heat Fuel:</b>	<b>Kerosene</b>	<b>School:</b>	<b>\$ 2773</b>	<b>HOA Fee:</b>	<b>Balance: \$</b>
<b>Fuel Costs:</b>		<b>Village:</b>	<b>\$</b>	<b>HOA Period:</b>	<b>Rate:</b>
<b>Cooling:</b>	<b>Central Air</b>	<b>Total:</b>	<b>\$ 5086 Estimated</b>	<b>HOA Incl:</b>	
<b>Water:</b>	<b>Well Except Dug Sewer: Septic</b>	<b>Spec Assess:</b>	<b>\$</b>		

Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



MLS#:	<b>201019654</b>	Status:	<b>Active</b>	Closing Date:	DOM: <b>69</b>	List Price:	<b>\$625,000</b>
Address:	<b>124 BURMA RD</b>				Total BR: <b>4</b>	Orig Price:	<b>\$625,000</b>
City/Town:	<b>Broadablin</b>	Village:			Total Rm: <b>10</b>	Sold Price:	
County:	<b>Fulton</b>	Locale:	<b>Sacandaga Lake</b>		Total Bth: <b>3.1</b>	Map:	<b>186 F 2</b>
School District:	<b>Broadablin-Perth</b>	Projected School:				Style:	<b>Colonial</b>
						Model:	<b>Colonial</b>

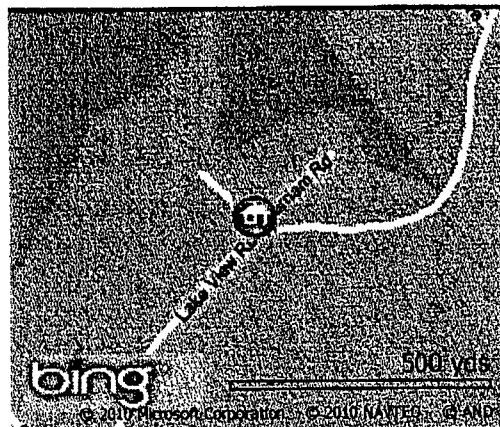
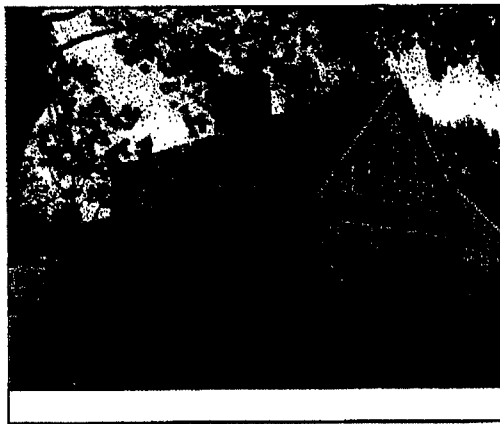
ROOM	B	1	2	3	FRP	Basement:	<b>Full</b>	Roof:	<b>Asphalt Shingle</b>
Living Room:		<b>2</b>				Attic:	<b>Full, Walk-Up, Storage</b>	Exterior:	<b>Vinyl</b>
Dining Room: FDR		<b>1</b>				Laundry:	<b>1st Floor</b>	Off St Parking:	Age: <b>8</b>
Kitchen:		<b>2</b>				Garage:	<b>2 Detached, Carport</b>	Condition:	<b>Superior</b>
Family Room:		<b>1</b>				Amenities:	<b>Ceramic Tile, Bay Window, Gourmet Kitchen, Built-In Cabinets, Walk-In Closet, Wall to Wall Carpet</b>		Age Desc: <b>Estimated</b>
Bedroom:		<b>1</b>	<b>3</b>			Interior Features:	<b>Cable Hook-Up, Garage Door Opener, Generator, Humidifier, Paddle Fan, Security System, Sump Pump</b>	Handicap:	<b>No</b>
Loft:			<b>1</b>					Fireplaces:	
								Woodstoves:	
Full Bath:	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>				Acres:	<b>0.430</b>
Partial Bath:	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>		Exterior Features:	<b>Garden, Lighting, Patio, Porch</b>	Survey:	<b>Yes</b>
Kitchen Type:	<b>Eat In</b>					Appliances:	<b>Range w/Oven, Dishwasher, Microwave</b>	Above Gr SqFt:	<b>2340</b>
						Features:		Desc:	<b>Estimated</b>
						Lot:		Below GR SqFt:	
						Description:	<b>Dead End, Level, View, Landscaped, Lake Front,</b>		
Remarks:	<b>Make this your opportunity to own this spectacular, "Lake Front Home". Enjoy 80ft. of landscaped &amp; level water front, with beautiful views of the mountains, lake and sunset. This Colonial home boasts of spacious living, w/ an updated Cherry Kitchen. The Cabin can be rented, there is also living space above the over sized garage, or invite your friends and family to this retreat located</b>								
Directions:	<b>From Route 29, to Fishouse, left on South Shore, Right onto Burma to the end</b>								

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	<b>Hot Water, Baseboard, Zoned</b>	General:	\$	HOA:	Assum Mtg:
Heat Fuel:	<b>Oil</b>	School:	\$	HOA Fee:	Balance: \$
Fuel Costs:		Village:	\$	HOA Period:	Rate:
Cooling:	<b>Window A/C Unit, Attic Fan</b>	Total:	<b>\$ 3854 Estimated</b>	HOA Incl:	
Water:	<b>Well Except Dug Sewer: Septic</b>	Spec Assess:	<b>\$ wlt...</b>		

Virtual Tour URL:

Virtual Tour

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

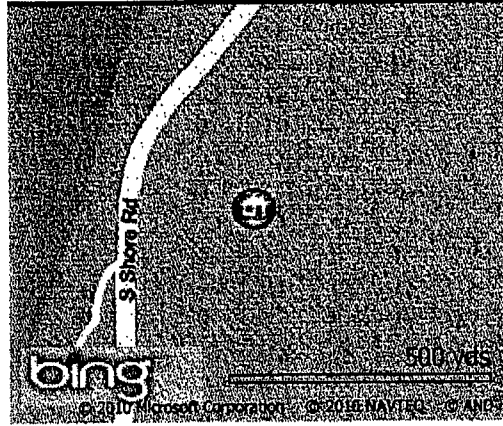
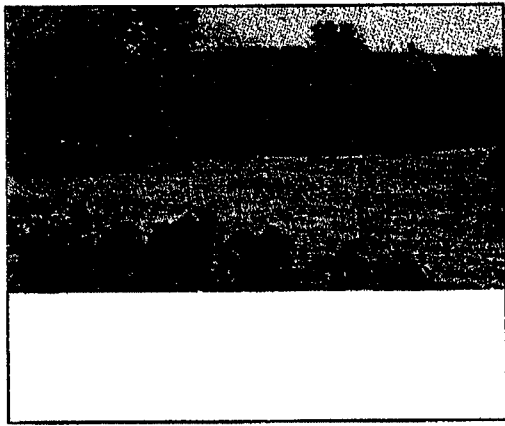


<b>MLS#:</b>	<b>201013454</b>	<b>Status:</b>	<b>Closed (Final Sale)</b>	<b>Closing Date:</b>	<b>5/28/2010</b>	<b>DOM:</b>	<b>59</b>	<b>List Price:</b>	<b>\$449,900</b>
<b>Address:</b>	<b>117 MERRIAM RD</b>					<b>Total BR:</b>	<b>3</b>	<b>Orig Price:</b>	<b>\$499,000</b>
<b>City/Town:</b>	<b>Broadalbin</b>	<b>Village:</b>				<b>Total Rm:</b>	<b>8</b>	<b>Sold Price:</b>	<b>\$444,900</b>
<b>County:</b>	<b>Fulton</b>	<b>Locale:</b>	<b>Lakefront</b>			<b>Total Bth:</b>	<b>2.0</b>	<b>Map:</b>	<b>25</b>
<b>School District:</b>	<b>Broadalbin-Perth</b>	<b>Projected School:</b>						<b>Style:</b>	<b>Contemporary</b>
								<b>Model:</b>	

<b>ROOM</b>	<b>B</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FRP</b>	<b>Basement:</b>	<b>Full</b>	<b>Roof:</b>	<b>Asphalt Shingle</b>
<b>Living Room:</b>		<b>1</b>			<b>Gas ...</b>	<b>Attic:</b>		<b>Exterior:</b>	<b>Vinyl</b>
<b>Dining Room: CDR</b>		<b>1</b>				<b>Laundry:</b>		<b>Off St Parking:</b>	<b>6</b>
<b>Kitchen:</b>		<b>1</b>				<b>Garage:</b>	<b>2 Detached</b>	<b>Condition:</b>	<b>Superior</b>
<b>Family Room:</b>						<b>Amenities:</b>	<b>Vaulted Ceiling, Sliding Glass Door, Wood Floors</b>		<b>Age:</b>
<b>Bedroom:</b>		<b>2</b>	<b>1</b>						<b>Age Desc:</b>
						<b>Interior Features:</b>	<b>Paddle Fan, High Speed Internet Acc</b>		<b>Actual</b>
<b>Full Bath:</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>				<b>Handicap:</b>	<b>No</b>
<b>Partial Bath:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>Exterior Features:</b>	<b>Patio, Porch/Enclosed, Porch</b>	<b>Fireplaces:</b>	<b>1</b>
<b>Kitchen Type:</b>	<b>Eat In</b>					<b>Appliances:</b>		<b>Woodstoves:</b>	<b>0</b>
						<b>Features:</b>		<b>Acres:</b>	<b>0.350</b>
						<b>Lot:</b>		<b>Survey:</b>	
						<b>Description:</b>	<b>Lake Front</b>	<b>Above Gr SqFt:</b>	<b>1542</b>
<b>Remarks:</b>	<b>Amazing adirondack lakefront home with spectacular views. Year round use in this 2004 custom contemporary. New Kitchen boasts stainless steel appliances, breakfast bar and an open floorplan to dining and living area. Knotty pine interior, maple hardwood floors and Anderson windows. Full basement, detached garage, enclosed porch plus sliding glass door to the deck. Custom</b>								
<b>Directions:</b>	<b>SOUTH SHORE ROAD(CO RT 110) WEST RIGHT ON LAKEVIEW ROAD</b>								
								<b>Desc:</b>	<b>Estimated</b>
								<b>Below GR SqFt:</b>	<b>700</b>

<b>UTILITIES</b>		<b>ANNUAL TAXES</b>		<b>OFFERING TERMS</b>	
<b>Heat System:</b>	<b>Hot Air</b>	<b>General:</b>	<b>\$</b>	<b>HOA:</b>	<b>Assum Mtg:</b>
<b>Heat Fuel:</b>	<b>Liquid Propane</b>	<b>School:</b>	<b>\$</b>	<b>HOA Fee:</b>	<b>Balance:</b>
<b>Fuel Costs:</b>		<b>Village:</b>	<b>\$</b>	<b>HOA Period:</b>	<b>Rate:</b>
<b>Cooling:</b>	<b>Central Air</b>	<b>Total:</b>	<b>\$ 6500 Estimated</b>	<b>HOA Incl:</b>	
<b>Water:</b>	<b>Well Except Dug Sewer: Septic</b>	<b>Spec Assess:</b>	<b>\$</b>		
<b>Virtual Tour URL:</b>					
<b>Virtual Tour</b>					

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



MLS#:	<b>201018544</b>	Status: <b>Active</b>	Closing Date:	DOM: <b>85</b>	List Price: <b>\$149,000</b>
Address:	<b>224 SOUTH SHORE RD</b>				Orig Price: <b>\$149,000</b>
City/Town:	<b>Edinburg</b>	Village:		Zip: <b>12134</b>	Sold Price:
County:	<b>Saratoga County</b>	Locale:			Map: <b>NA</b>
School District:	<b>Broadalbin-Parth</b>	Projected School:			

Documents Avail:	<b>Survey</b>	Water:	<b>To Be Brought In</b>
Utilities Avail:	<b>Electric in Above Ground</b>	Sewer:	<b>None</b>
Structures On Site:			

ANNUAL TAXES		OFFERING TERMS		Lot Size:	
General:	\$			Description:	<b>Slope, Cleared, Wooded, Waterfront, Water View, See Remarks</b>
School:	\$	Assum Mtg:		Zoning:	
Village:	\$	Balance:	\$	Frontage:	
Total:	\$ <b>TBD</b> <b>see Remarks</b>	Rate:		Acres:	<b>8.900</b>
Spec Assess:	\$				

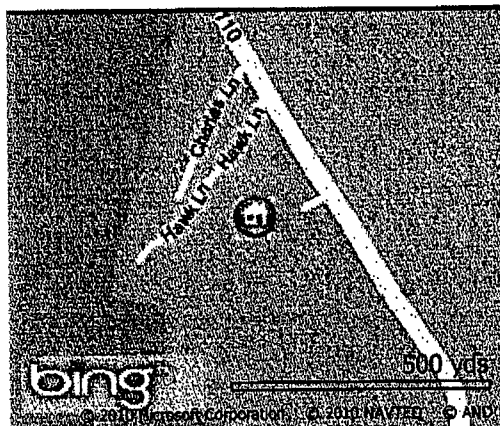
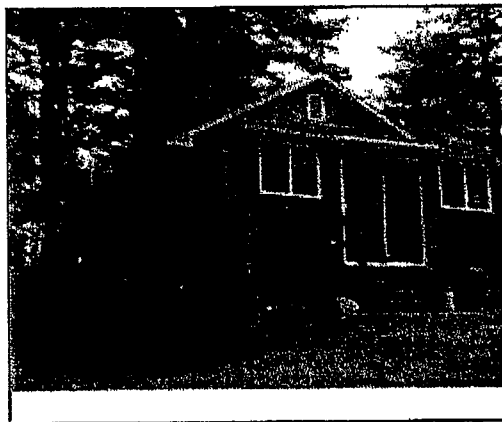
Remarks: **8.9 acres with 55' of lakefront with low Saratoga County taxes. Mixture of woods and open fields with western views of the Sacandaga Lake and Mountains. Property can be purchase with house (MLS 201018543) for 375K**

Directions: **From Broadalbin take S. Shore Road(Co Hwy 110). Property is just south of the I-Go-Inn**

Possession:

Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

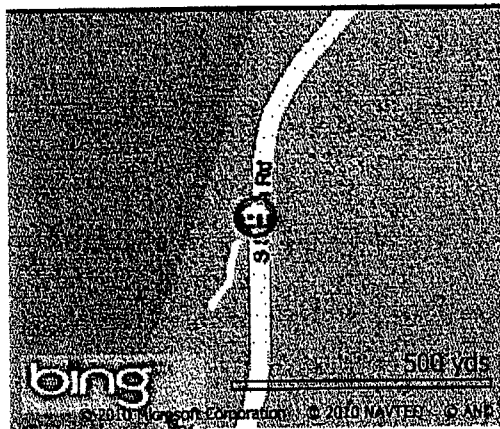
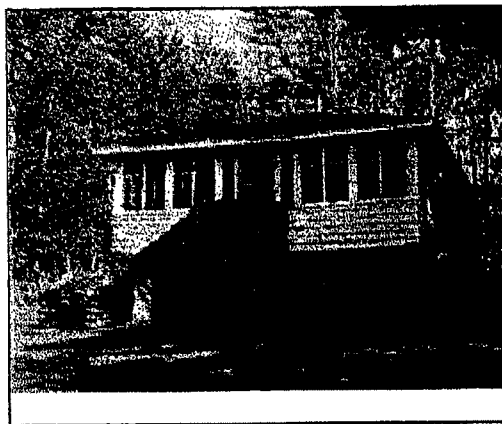


MLS#:	<b>201012412</b>	Status:	<b>Active</b>	Closing Date:	DOM: <b>164</b>	List Price:	<b>\$269,000</b>	
Address:	<b>1295 COUNTY HIGHWAY 110</b>				Total BR:	<b>1</b>	Orig Price:	<b>\$299,000</b>
City/Town:	<b>Broadalbin</b>	Village:			Total Rm:	<b>4</b>	Sold Price:	
County:	<b>Fulton</b>	Locale:			Total Bth:	<b>1.0</b>	Map:	<b>NA</b>
School District:	<b>Broadalbin-Perth</b>	Projected School:					Style:	<b>Cottage</b>
							Model:	

ROOM	B	1	2	3	FRP	Basement:	<b>Crawl Space</b>	Roof:	<b>Asphalt Shingle</b>
Living Room:		<b>1</b>				Attic:		Exterior:	<b>Vinyl, Wood</b>
Dining Room:	<b>NO</b>					Laundry:	<b>Bathroom</b>	Off St Parking:	Age: <b>55</b>
Kitchen:		<b>1</b>				Garage:	<b>0 Carport</b>	Condition:	<b>Good</b>
Family Room:						Amenities:	<b>Fireplace Insert</b>		Age Desc: <b>Estimated</b>
Bedroom:		<b>1</b>							Handicap: <b>No</b>
		<b>1</b>							Fireplaces:
						Interior Features:			Woodstoves:
Full Bath:		<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>				Acres: <b>0.470</b>
Partial Bath:		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	Exterior Features:	<b>Deck</b>		Survey:
Kitchen Type:	<b>Eat In</b>					Appliances:	<b>Range w/Oven, Refrigerator, Dishwasher</b>		Above Gr SqFt: <b>792</b>
						Features:			Desc: <b>Estimated</b>
						Lot:			Below GR SqFt:
						Description:	<b>Dead End, Treed/Wooded, Privacy, Lake Front, See</b>		
Remarks:	<b>138' of lakeside access on the Great Sacandaga Lake in a sheltered bay. Year round cottage renovated in last 5 years with room to expand. Private setting with all state land on one side. Close drive to the Village of Broadalbin. Western views from the beach for sunsets.</b>								
Directions:	<b>From the Village of Broadalbin past Vunk Road. Driveway on left number on mailbox and sign at road.</b>								

UTILITIES			ANNUAL TAXES			OFFERING TERMS		
Heat System:	<b>Space</b>		General:	\$		HOA:		Assum Mtg:
Heat Fuel:	<b>Liquid Propane</b>		School:	\$		HOA Fee:	\$	Balance:
Fuel Costs:			Village:	\$		HOA Period:		Rate:
Cooling			Total:	<b>\$ 4473</b>	<b>Estimated</b>	HOA Incl:		
Water:	<b>Dug Well</b>	Sewer: <b>Septic</b>	Spec Assess:	\$				
Virtual Tour URL:								

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and a representations or warranties as to the accuracy of this information.



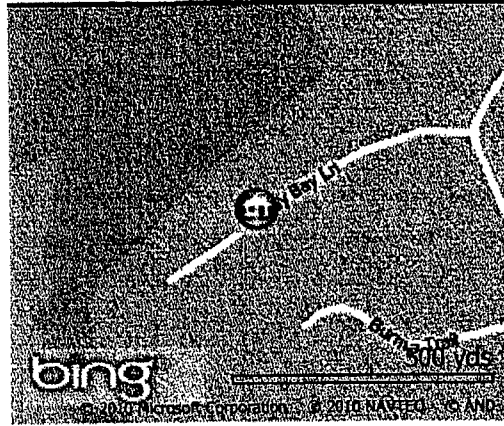
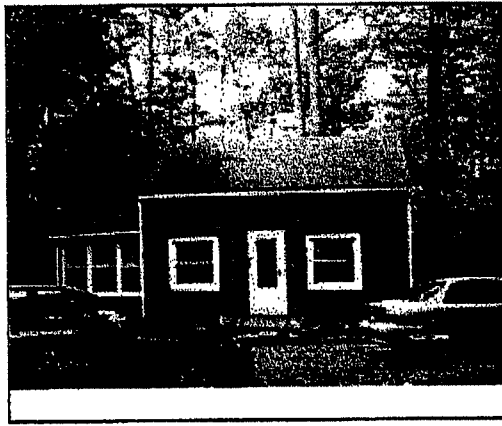
<b>MLS#:</b>	<b>201022985</b>	<b>Status:</b>	<b>Pending (Under Con...</b>	<b>Closing Date:</b>	<b>8/20/2010</b>	<b>DOM:</b>	<b>20</b>	<b>List Price:</b>	<b>\$349,500</b>
<b>Address:</b>	<b>2 EDGEWATER TER</b>				<b>Total BR:</b>	<b>3</b>	<b>Orig Price:</b>	<b>\$349,500</b>	
<b>City/Town:</b>	<b>Edinburg</b>	<b>Village:</b>		<b>Total Rm:</b>	<b>6</b>	<b>Sold Price:</b>	<b>\$1,000</b>		
<b>County:</b>	<b>Saratoga</b>	<b>Locale:</b>		<b>Total Bth:</b>	<b>1.0</b>	<b>Map:</b>	<b>NA</b>		
<b>School District:</b>	<b>Broadalbin-Perth</b>	<b>Projected School:</b>				<b>Style:</b>	<b>Cottage</b>		
						<b>Model:</b>			

<b>ROOM</b>	<b>B</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FRP</b>	<b>Basement:</b>	<b>Full</b>	<b>Roof:</b>	<b>Asphalt Shingle</b>	
<b>Living Room:</b>		<b>1</b>				<b>Attic:</b>		<b>Exterior:</b>	<b>Stone, Wood</b>	
<b>Dining Room: DNA</b>		<b>1</b>				<b>Laundry:</b>		<b>Off St Parking:</b>		<b>Age:</b>
<b>Kitchen:</b>		<b>1</b>				<b>Garage:</b>	<b>0</b>	<b>Condition:</b>	<b>Good</b>	<b>Age Desc:</b>
<b>Family Room:</b>						<b>Amenities:</b>				<b>70</b>
<b>Bedroom:</b>		<b>3</b>								<b>Estimated</b>
						<b>Interior Features:</b>			<b>Handicap:</b>	<b>No</b>
<b>Full Bath:</b>		<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>				<b>Fireplaces:</b>	
<b>Partial Bath:</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>Exterior Features:</b>	<b>Porch/Enclosed</b>		<b>Woodstoves:</b>	
<b>Kitchen Type:</b>	<b>Eat In</b>					<b>Appliances:</b>	<b>Range w/Oven, Refrigerator</b>		<b>Acres:</b>	<b>0.450</b>
						<b>Features:</b>			<b>Survey:</b>	
						<b>Lot:</b>	<b>100 X 210</b>		<b>Above Gr SqFt:</b>	<b>864</b>
						<b>Description:</b>	<b>Privacy, View, Lake Front, Water View, See</b>		<b>Desc:</b>	<b>Estimated</b>
<b>Remarks:</b>	<b>Private Location with 100' of lakeside access. 100 X 210 lot with lots of room to expand. Nice year round cottage with a full basement. Low Saratoga County Taxes. Great western views. Grass all the way to the lake. NO STAIRS and NO ROAD TO CROSS. Just you and the lake. Short drive from Saratoga Springs.</b>									
<b>Directions:</b>	<b>S. Shore Road in the Town of Edinburg near the I-Go Inn. Edgewater Terrace is a private road off of S. Shore Road. First House on Right.</b>									

<b>UTILITIES</b>		<b>ANNUAL TAXES</b>		<b>OFFERING TERMS</b>	
<b>Heat System:</b>	<b>Hot Air</b>	<b>General:</b>	<b>\$</b>	<b>HOA:</b>	<b>Assum Mtg:</b>
<b>Heat Fuel:</b>	<b>Oil</b>	<b>School:</b>	<b>\$</b>	<b>HOA Fee:</b>	<b>Balance:</b>
<b>Fuel Costs:</b>		<b>Village:</b>	<b>\$</b>	<b>HOA Period:</b>	<b>Rate:</b>
<b>Cooling</b>		<b>Total:</b>	<b>\$ 3171 Estimated</b>	<b>HOA Incl:</b>	<b>Other</b>
<b>Water:</b>	<b>Well Except Dug Sewer: Septic</b>	<b>Spec Assess:</b>	<b>\$</b>		

Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and a representations or warranties as to the accuracy of this information.



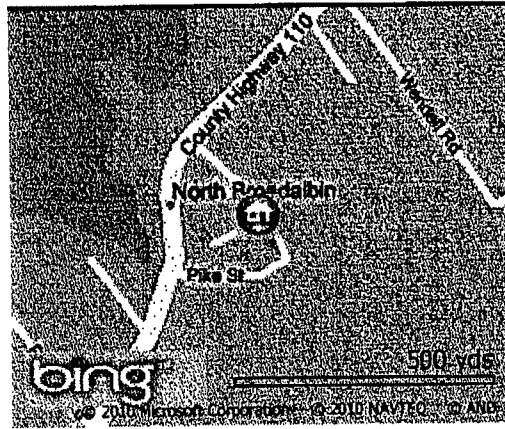
<b>MLS#:</b>	<b>29118176</b>	<b>Status:</b>	<b>Closed (Final Sale)</b>	<b>Closing Date:</b>	<b>11/5/2009</b>	<b>DOM:</b>	<b>31</b>	<b>List Price:</b>	<b>\$105,000</b>
<b>Address:</b>	<b>136 SHADY BAY LA</b>				<b>Total BR:</b>	<b>2</b>	<b>Orig Price:</b>	<b>\$105,000</b>	
<b>City/Town:</b>	<b>Broadalbin</b>	<b>Village:</b>	<b>Water rights &amp; Private dr</b>		<b>Total Rm:</b>	<b>6</b>	<b>Sold Price:</b>	<b>\$85,000</b>	
<b>County:</b>	<b>Fulton</b>	<b>Locale:</b>	<b>Sacandaga Lake</b>		<b>Total Bth:</b>	<b>1.0</b>	<b>Map:</b>	<b>186A7</b>	
<b>School District:</b>	<b>Broadalbin-Perth</b>	<b>Projected School:</b>					<b>Style:</b>	<b>Camp</b>	
							<b>Model:</b>		

<b>ROOM</b>	<b>B</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FRP</b>	<b>Basement:</b>	<b>None</b>	<b>Roof:</b>	<b>Asphalt Shingle</b>	
<b>Living Room:</b>		<b>1</b>				<b>Attic:</b>		<b>Exterior:</b>	<b>Vinyl</b>	
<b>Dining Room: DNA</b>						<b>Laundry:</b>		<b>Off St Parking:</b>	<b>6</b>	<b>Age:</b>
<b>Kitchen:</b>		<b>1</b>				<b>Garage:</b>	<b>0 None</b>	<b>Condition:</b>	<b>Excellent</b>	<b>Age Desc:</b>
<b>Family Room:</b>						<b>Amenities:</b>	<b>Country Kitchen, Wall to Wall Carpet</b>			<b>Actual</b>
<b>Bedroom:</b>			<b>2</b>						<b>Handicap:</b>	<b>No</b>
<b>den</b>		<b>1</b>							<b>Fireplaces:</b>	<b>0</b>
<b>enc. porch</b>		<b>1</b>				<b>Interior Features:</b>			<b>Woodstoves:</b>	<b>0</b>
									<b>Acres:</b>	<b>0.100</b>
<b>Full Bath:</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>					<b>Survey:</b>	<b>No</b>
<b>Partial Bath:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>Exterior Features:</b>	<b>Gas Grill, Lighting, Outbuilding, Porch</b>			
<b>Kitchen Type:</b>	<b>Eat In</b>					<b>Appliances:</b>	<b>Range w/Oven, Refrigerator</b>			<b>Above Gr SqFt:</b>
						<b>Features:</b>			<b>Desc:</b>	<b>Actual</b>
						<b>Lot:</b>			<b>Below GR SqFt:</b>	
						<b>Description:</b>	<b>Dead End, View, Water View</b>			
<b>Remarks:</b>	<b>Great location on dead-end private road with 10' of beach rights on the Great Sacandaga Lake. All new windows and vinyl siding, Well is drilled 353' deep, sold fully furnished, large enclosed porch with 10 windows overlooking great view, eating area on porch</b>									
<b>Directions:</b>	<b>Rt 30 (N) to Co. Rd 110 to Broadalbin, (L) on Lakeview (L) on Shady Bay Lane</b>									

<b>UTILITIES</b>		<b>ANNUAL TAXES</b>		<b>OFFERING TERMS</b>	
<b>Heat System:</b>	<b>Space</b>	<b>General:</b>	<b>\$ 749 Actual</b>	<b>HOA:</b>	<b>Assum Mtg:</b>
<b>Heat Fuel:</b>	<b>Liquid Propane</b>	<b>School:</b>	<b>\$ 1180 Actual</b>	<b>HOA Fee:</b>	<b>\$</b>
<b>Fuel Costs:</b>		<b>Village:</b>	<b>\$</b>	<b>HOA Period:</b>	<b>Rate:</b>
<b>Cooling</b>		<b>Total:</b>	<b>\$ 1929 Actual</b>	<b>HOA Incl:</b>	
<b>Water:</b>	<b>Well Except Dug Sewer: Septic</b>	<b>Spec Assess:</b>	<b>\$</b>		

Virtual Tour URL:

The Information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and a representations or warranties as to the accuracy of this information.



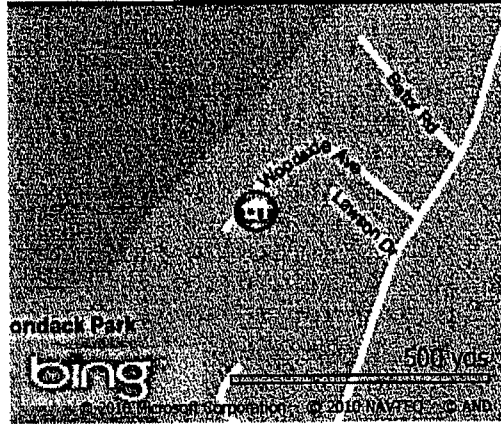
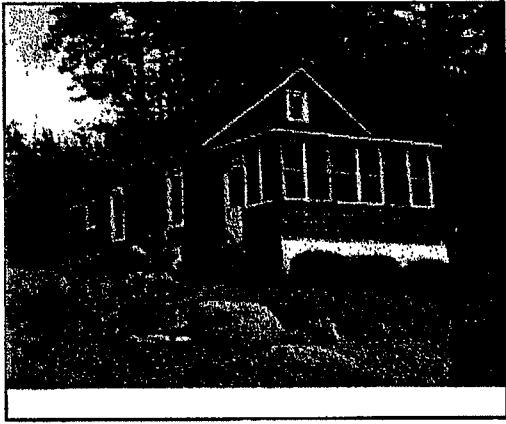
<b>MLS#:</b>	<b>201016342</b>	<b>Status:</b>	<b>Closed (Final Sale)</b>	<b>Closing Date:</b>	<b>6/28/2010</b>	<b>DOM:</b>	<b>54</b>	<b>List Price:</b>	<b>\$112,000</b>
<b>Address:</b>	<b>109 PIKE ST EXT</b>					<b>Total BR:</b>	<b>2</b>	<b>Orig Price:</b>	<b>\$112,000</b>
<b>City/Town:</b>	<b>Broadalbin</b>	<b>Village:</b>				<b>Total Rm:</b>	<b>4</b>	<b>Sold Price:</b>	<b>\$95,000</b>
<b>County:</b>	<b>Fulton</b>	<b>Locale:</b>				<b>Total Bth:</b>	<b>1.0</b>	<b>Map:</b>	<b>186F3</b>
<b>School District:</b>	<b>Broadalbin-Perth</b>	<b>Projected School:</b>						<b>Style:</b>	<b>Camp</b>
								<b>Model:</b>	<b>Camp</b>

<b>ROOM</b>	<b>B</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FRP</b>	<b>Basement:</b>	<b>None</b>	<b>Roof:</b>		<b>Metal</b>	
<b>Living Room:</b>		<b>1</b>				<b>Attic:</b>	<b>Hatch</b>	<b>Exterior:</b>		<b>Clapboard</b>	
<b>Dining Room: NO</b>						<b>Laundry:</b>		<b>Off St Parking:</b>	<b>8</b>	<b>Age:</b>	<b>50</b>
<b>Kitchen:</b>						<b>Garage:</b>	<b>0 None</b>	<b>Condition:</b>	<b>Very Good</b>	<b>Age Desc:</b>	<b>Estimated</b>
<b>Family Room:</b>						<b>Amenities:</b>	<b>Ceramic Tile, Wall to Wall Carpet, Laminate Floors</b>			<b>Handicap:</b>	<b>No</b>
<b>Bedroom:</b>		<b>2</b>				<b>Interior Features:</b>	<b>Cable Hook-Up, High Speed Internet Acc</b>			<b>Fireplaces:</b>	
										<b>Woodstoves:</b>	
<b>Full Bath:</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>		<b>Exterior Features:</b>	<b>Outbuilding, Porch/Enclosed, Shed</b>			<b>Acres:</b>	<b>0.290</b>
<b>Partial Bath:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>Appliances:</b>	<b>Range w/Oven, Refrigerator</b>			<b>Survey:</b>	
<b>Kitchen Type:</b>	<b>Eat In</b>					<b>Features:</b>				<b>Above Gr SqFt:</b>	<b>900</b>
						<b>Lot:</b>				<b>Desc:</b>	<b>Estimated</b>
						<b>Description:</b>	<b>Corner, Cul-de-sac, Treed/Wooded, Water View,</b>			<b>Below GR SqFt:</b>	
<b>Remarks:</b>	<b>Charming 1 story camp within 2 minute walk to Great Sacandaga Lake. This camp features many upgrades with a new kitchen, bath, windows, tin roof, flooring. Spend the summer or winter on the lake. Lake rights.</b>										
<b>Directions:</b>	<b>110 (South Shore Rd.) to right on Pike St. Ext.</b>										

<b>UTILITIES</b>		<b>ANNUAL TAXES</b>		<b>OFFERING TERMS</b>	
<b>Heat System:</b>	<b>Baseboard, Space</b>	<b>General:</b>	<b>\$ 546 Actual</b>	<b>Cash Only</b>	
<b>Heat Fuel:</b>	<b>Electricity, Liquid Propane</b>	<b>School:</b>	<b>\$ 877 Actual</b>	<b>HOA:</b>	<b>Assum Mtg:</b>
<b>Fuel Costs:</b>		<b>Village:</b>	<b>\$</b>	<b>HOA Fee:</b>	<b>Balance:</b>
<b>Cooling:</b>	<b>None</b>	<b>Total:</b>	<b>\$ 1423 Actual</b>	<b>HOA Period:</b>	<b>Rate:</b>
<b>Water:</b>	<b>Well Except Dug Sewer: Septic</b>	<b>Spec Assess:</b>	<b>\$</b>	<b>HOA Incl:</b>	

Virtual Tour URL:

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

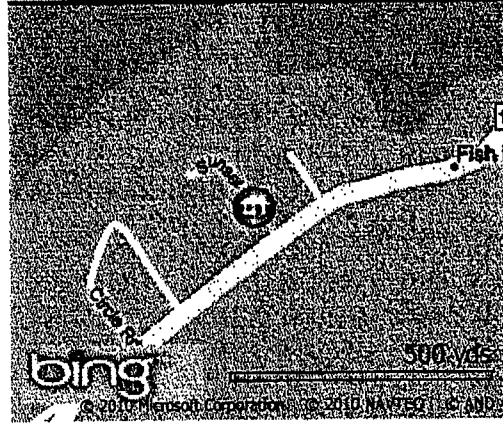
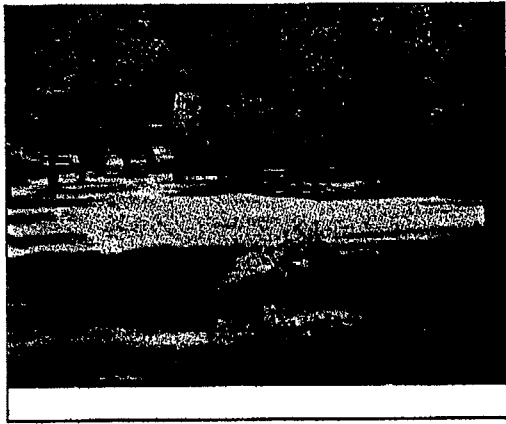


MLS#:	29113271	Status:	Closed (Final Sale)	Closing Date:	6/30/2010	DOM:	243	List Price:	\$159,900
Address:	147 WOODSIDE AV				Total BR:	1	Orig Price:	\$218,900	
City/Town:	Broadalbin	Village:		Total Rm:	6	Sold Price:	\$149,000		
County:	Fulton	Locale:	Great Sacandaga Lake	Total Bth:	1.0	Map:	yes		
School District:	Broadalbin-Perth	Projected School:		Style:	Cottage	Model:			

ROOM	B	1	2	3	FRP	Basement:	None	Roof:	Fiberglass Shingle
Living Room:	1				Wo...	Attic:		Exterior:	Clapboard
Dining Room: DNA	1					Laundry:	None	Off St Parking:	Age: 68
Kitchen:	1					Garage:	2 Detached, Carport	Condition:	Excellent Age Desc: Actual
Family Room:	1					Amenities:	Chair Rail, Crown Molding, Cathedral Ceiling, Atrium Door, Sliding Glass Door, Wood Floors		
Bedroom:		1				Interior Features:	Cable Hook-Up, Paddle Fan, High Speed Internet Acc		Handicap: No
3- season	1								Fireplaces:
									Woodstoves: 1
Full Bath:	0	1	0	0					Acres: 0.360
Partial Bath:	0	0	0	0		Exterior Features:	Lighting, Outbuilding, Porch, Shed		Survey:
Kitchen Type:	Eat In					Appliances:	Range w/Oven, Dishwasher		Above Gr SqFt: 900
						Features:			Desc: Actual
						Lot:			Below GR SqFt:
						Description:	Cul-de-sac, Dead End, View, Landscaped, Water		
Remarks:	Perfect Year Round Cottage on Quiet Dead End Street! Boasts hardwood floors and an enclosed 3-season room to enjoy your view of the Great Sacandaga Lake. Deeded lake rights, with a 10' lake permit & space for a dock is allowed. Beautiful double lot with plenty of room for expansion. Don't forget the huge carport to store all your toys. Peaceful Relaxation Awaits!								
Directions:	Broadalbin to County Rt. 117 to Lakeview Road, 1.4 miles, left to Woodside Avenue, go almost to end of road on left, brown cottage.								

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	Hot Air, Stove	General:	\$	Assum Mtg:	
Heat Fuel:	Liquid Propane, Pellets/Corn	School:	\$	Balance:	\$
Fuel Costs:		Village:	\$	Rate:	
Cooling:	None	Total:	\$ 2400. Estimated	HOA Period:	
Water:	Well Except Dug Sewer: Septic	Spec Assess:	\$	HOA Incl:	
Virtual Tour URL:					
Virtual Tour					

The information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.



MLS#:	28114751	Status:	Closed (Final Sale)	Closing Date:	9/3/2009	DOM:	414	List Price:	\$219,000
Address:	124 SUNSET LA					Total BR:	3	Orig Price:	\$289,000
City/Town:	North Hampton	Village:				Total Rm:	6	Sold Price:	\$185,000
County:	Fulton	Locale:				Total Bth:	1.0	Map:	173289
School District:	Broadalbin-Perth	Projected School:						Style:	Camp
								Model:	Camp

ROOM	B	1	2	3	FRP	Basement:	None	Roof:	Asphalt Shingle
Living Room:		1				Attic:	Full, Pull-Down	Exterior:	Vinyl
Dining Room: D...						Laundry:		Off St Parking:	10
Kitchen:		1				Garage:	0	Condition:	Good
Family Room:						Amenities:			
Bedroom:		3							
						Interior Features:			
Full Bath:		0	1	0	0				
Partial Bath:		0	0	0	0	Exterior Features:			
Kitchen Type:		Eat In				Appliances:			
						Features:			
						Lot:	75x205x87x157.5		
						Description:	Level, Privacy, View, Water View		
Remarks:									
Directions:									

UTILITIES		ANNUAL TAXES		OFFERING TERMS	
Heat System:	Baseboard	General:	\$1637 Actual	HOA:	Assum Mtg:
Heat Fuel:	Electricity	School:	\$2426 Actual	HOA Fee:	\$
Fuel Costs:	0	Village:	\$	HOA Period:	Rate:
Cooling:		Total:	\$4063 Actual	HOA Ind:	
Water:	Dug Well, See ...	Spec Assess:	\$ none		
	Sewer: Septic				

Virtual Tour URL:

The Information in this listing was gathered from third party sources including the seller and public records. CRMLS and its subscribers disclaim any and all representations or warranties as to the accuracy of this information.

# **EXHIBIT F**

**Trust Asset Report**

Prepared by Geoffrey R. Smith, Trustee for the David L. and Lynn A. Smith Irrevocable Trust

Asset	Book Value
Kinderhook Bank Checking Account	\$36,126
Kinderhook Bank Savings Account	\$1,534,941.18
Capacity One Management 49% Equity	\$53,200.28
Sacandaga Camps	\$600,000
RMR Stock Account	\$710,286.42
Pine Street Capital Stock	\$240,323
Pine Street Capital Distributions (Held by Receiver)	\$364,000
<b>Total</b>	<b>\$3,592,077.16</b>

**Kinderhook Checking Account**

This account was established by the prior Trustee, David Wojeski as an account from which to pay Trust expenses including taxes, and maintenance on real property. It does not earn interest.

**Kinderhook Savings Account**

Also set up by David Wojeski, this account earns interest of 1.31%. This account earned total interest in 2011 of \$21,230.66 and total interest thus far in 2012 of \$3,331.14.

**Capacity One Management**

The Trust made a \$200,000 investment in Capacity One Management, LLC in July of 2010 for 49% equity in the company, under the Terms and Conditions stipulated in the attached "TrustEquityLetter0001."

Currently, Capacity One has a total book value of \$108,572, of which \$53,200.28 is attributable to the Trust. Capacity One is in the business of acquiring hotel room night credits, and reselling those room nights through "travel membership clubs." Since inception, the company has total revenues of \$255,533.72 and total expenses of \$346,960.70. There is a cash balance currently of \$52,405.23.

Capacity One has secured a "buyer" that is in the position to purchase blocks of hotel room inventory up front. For this reason, no additional capital is needed to turn the business into profitable territory. The main challenge to the business is procuring new hotel inventory from hotels worldwide. To date, four transactions have been completed, and new prospecting for inventory is the main function of the business.

**Sacandaga Camps**

The camp properties on the Great Sacandaga Lake were purchased in July of 2010 for a price of \$600,000 cash. This is the best representation of the book value of the property. There is no mortgage

owed on the property, however there are expenses related to the maintenance and upkeep in order to preserve the value of the asset.

It is my opinion that because there is no risk of foreclosure, and no money owed on the property, that it would not be in the best interest of the Trust to attempt to sell this asset in the midst of the worst real estate market in U.S. history. There are signs of improvement (albeit slight) in the market, and this is an opportunity for the Trust to increase its value through appreciation of the asset.

As far as renting the property, it was recently opined by Judge Homer that because Lynn and Dave Smith lived at the property for five weeks, they are not due the roughly \$15,000 in upkeep and maintenance that they personally spent on behalf of the Trust. This equates to a rental rate of \$3,000 per week. If the property can be rented at this rate over the coming summer, I believe it would be in the best interest of the Trust to do so.

Maintenance on the camps is extremely intricate as it relates to plumbing and electricity. While I have some understanding of how to fix the problems that always seem to arise, my father David Smith would be the cheapest and most effective way to solve maintenance problems, as he has done himself for the better part of 40 years. If the camp were to be rented, I would recommend that all maintenance be performed by him.

#### **RMR Stock Account**

The RMR Stock Account has a number of assets which I'll address one by one. All values are as of 2/29/12 which is the latest statement I have.

- **Cash** – There is \$184,598.44 in a money market cash account
- **Bristol Meyers Squibb** – 922 shares currently valued at \$29,660.74 with unrealized gains of \$7,458.93. BMY pays a 4% dividend and has risen by \$10 over the past year (38%). I see no reason to make any changes to this position.
- **CIFC Corp** – 3800 shares currently valued at \$19,912. There is no cost basis established on this investment because it was originally made when the company was still private, and known as Deerfield Capital. However, the stock had a reverse 10-1 split roughly 3 years ago, and is virtually worthless. Selling the position would generate large realized long-term losses, but without any long-term gains to offset them, they would be of no use.
- **Citigroup** – 2500 shares currently valued at \$83,300 with unrealized losses of \$1,089,201.25. Citi is obviously not in great position financially compared to when the investment was made. However, again there is no use in selling the asset as the unrealized losses are so great that they would be of no benefit. Better to hold the stock in hopes that it recovers substantially.
- **Mead Johnson Nutrition Co.** – 680 shares currently valued at \$52,879 with unrealized gains of \$26,911.71. MJN has risen by \$25 over the past year (43.55%) and has performed extremely well. This is a case where some capital could be taken off of the table, and offset by a sale in CIFC to minimize the tax consequence. I would recommend selling an amount equal to

\$25,958.29, which is the cost basis in the stock. This way the remaining position will be made up purely of profit. The gain that is ultimately realized from this trade should be equally offset by a loss taken in CIFIC.

- **Proshares Ultrashort +20 Year** – 5,000 shares currently valued at \$94,450 with unrealized losses of \$174,553.50. TBT is an exchange traded fund that is supposed to track the inverse of the long bond US Treasuries by a 2:1 ratio. This means that when interest rates rise, TBT should explode. This is all in theory, and in reality the stock hardly ever moves up. This is most likely due to the fact that the market is convinced that interest rates will stay close to zero for an extended period of time. Again, selling this position does no good from a tax perspective. In the past, the Trust had sold call options against this position in order to realize income on the underlying position. Since the freezing of the account in 2010, this strategy has been discontinued, but remains a viable option.

#### **Pine Street Capital Stock**

This investment continues to perform quite well. The latest report from Tim Welles is that they are working on liquidating the remainder of the investments. There is no opportunity to sell this investment in any case.

#### **Pine Street Capital Cash**

This asset is held by the Receiver in an unknown location to the Trustee.