

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

New York Regional Office Brookfield Place, 200 Vesey St. New York, NY 10281-1022

DIVISION OF ENFORCEMENT

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January 28, 2020

BY ECF

The Honorable Gary L. Sharpe United States District Judge United States District Court Northern District of New York United States Courthouse Albany, New York 12207

Re: SEC v. McGinn, Smith & Co., Inc., et al., 10-cv-457 (GLS)(CFH)

Dear Judge Sharpe:

On behalf of plaintiff Securities and Exchange Commission, I enclose for the Court's consideration and approval a proposed *Turnover Order (Fed. R. Civ. P. 69(a) and NY CPLR §§ 5225(b) and 5227) to Community Bank, N.A.* (the "Proposed Order").

If approved by the Court, the Proposed Order would require Community Bank to turn over to the Receiver, for distribution pursuant to the Court-approved plan, two accounts in the name of the David L. and Lynn A. Smith Irrevocable Trust U/A dated August 4, 2004 (the "Smith Trust"). As stated in the Court's *Final Judgment as to Defendant David L. Smith*, the assets of the Smith Trust shall "be treated as an asset of [Defendant David L.] Smith's and shall be applied to Smith's payment obligations under this Final Judgment." *See* Dkt. 835 at 7. Accordingly, the Commission respectfully requests that the Court approve the Proposed Order.

Respectfully submitted	1,
/s David Stoelting	
David Stoelting	

cc (by email and ECF): William J. Dreyer, Esq., counsel to Defendant David L. Smith

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. : 10 Civ. 457-GLS-CFH

:

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

:

Defendants.

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[PROPOSED] TURNOVER ORDER (FED. R. CIV. P. 69(a) AND NY CPLR §§ 5225(b) AND 5227) TO COMMUNITY BANK, N.A.

The Plaintiff-Judgment Creditor Securities and Exchange Commission (the "Commission") having moved for a turnover order pursuant to Rule 69(a) of the Federal Rules of Civil Procedure and New York Civil Practice Law and Rules ("NY CPLR") §§ 5225(b) and 5227, directed to the Respondent Community Bank, N.A. ("Community Bank"), and the Court having considered the papers submitted on such motion, and it appearing that such an order should be issued, it is hereby:

I.

ORDERED that the Respondent Community Bank turn over to the Court-appointed Receiver, William J. Brown, Esq. (the "Receiver"), certain property in its hands described as the balances in the accounts ending -- 4651 and --1306 in the name of "Defendant David L. and Lynn A. Smith Irrevocable Trust U/A dated August 4, 2004." As of December 31, 2019, the account ending --4651 had a balance of \$1,554,501.56, and the account ending --1306

had a balance of \$36,126.

Community Bank shall, within 14 days of the service of this turnover Order, make such payment to the Receiver, for inclusion in the receivership estate in this action and distribution pursuant to the Court-approved Plan. Payment shall be: (a) made by United States postal money order, certified check, bank cashier's check, or bank money order; (b) made payable to "William J. Brown, Receiver"; (c) hand-delivered or mailed to William J. Brown, Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, New York 12207; and (d) submitted with a copy of this Order and a cover letter that identifies: (i) Community Bank as submitting the payment and (ii) the name and number of this proceeding (SEC v. McGinn Smith & Co., Inc., 10-cv-457 (N.D.N.Y.)). Further, Respondent shall simultaneously transmit photocopies of evidence of payment, the cover letter sent to the Receiver, and this Order to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

II.

ORDERED that this Court shall retain jurisdiction to enforce compliance with this Order.

Dated: Albany, New York _______, 2020

UNITED STATES DISTRICT JUDGE