



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
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New York, NY 10281-1022

DIVISION OF
ENFORCEMENT

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February 12, 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 *John Hancock Life Insurance Co.* (the "Proposed Order"). If approved by the Court, the Proposed Order would require John Hancock Life Insurance Co. to turn over to the Receiver, for distribution pursuant to the Court-approved plan, two 401(k) accounts in the names David Smith and Timothy M. McGinn.

Both 401(k) accounts should be transferred to the Receiver. On September 4, 2019, the Court's Summary Order denied a motion by David Smith to have the funds in his 401(k) account released to him, finding that "[state law] exemptions may be disregarded in the enforcement of a disgorgement judgment." Dkt. 1066 at 2. Although Mr. McGinn has not made a similar motion, the same reasoning applies to his account.

Accordingly, the Commission respectfully requests that the Court approve the Proposed Order.

Respectfully submitted,

/s David Stoelting

David Stoelting

cc (by email and ECF): William J. Dreyer, Esq., counsel to Defendant David L. Smith
E. Stewart Jones, counsel to Defendant Timothy McGinn
William J. Brown, Esq., Receiver

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,		:
	<i>Plaintiff,</i>	:
v.		:
		10 Civ. 457-GLS-CFH
		:
McGINN, SMITH & CO., INC., et al.,		:
	<i>Defendants.</i>	:
<hr/>		:

[PROPOSED] TURNOVER ORDER (FED. R. CIV. P. 69(a) AND NY CPLR §§ 5225(b) AND 5227) TO JOHN HANCOCK LIFE INSURANCE CO.

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 John Hancock Civil Practice Law and Rules (“NY CPLR”) §§ 5225(b) and 5227, directed to the Respondent John Hancock Life Insurance Co. (“John Hancock Life”), 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 John Hancock Life turn over to the Court-appointed Receiver, William J. Brown, Esq. (the “Receiver”) certain property in its hands described as the balances in the following accounts:

<u>Beneficiary</u>	<u>Financial Institution</u>	<u>Account No.</u>	<u>Balance (approx.)</u>
David Smith (401K) SSN: XXX-XX-XX09 DOB: XX/XX/1945	John Hancock Life Insurance Co. Retirement Plan Services P.O. Box 600 Buffalo, NY 14201-0600	-1561	\$ 133,418.26 (plus the value of any uncashed checks)
Timothy M. McGinn (401K) SSN: XXXX-XX-XX51 DOB: XX/XX/1948	John Hancock Life Insurance Co. Retirement Plan Services P.O. Box 600 Buffalo, NY 14201-0600	-1561	\$ 5,740.40 (plus the value of any uncashed checks)

John Hancock Life 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, NY 12207; and (d) submitted with a copy of this Order and a cover letter that identifies: (i) John Hancock Life 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