

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff-Appellee,

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,

Defendants, and

LYNN A. SMITH,

Relief Defendant-Appellant.

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

Intervenor.

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

**DECLARATION OF
JAMES D.
FEATHERSTONHAUGH
IN OPPOSITION
TO PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

I, JAMES D. FEATHERSTONHAUGH, pursuant to 28 USC §1746, declare under penalty of perjury, the following facts:

1. I am an attorney duly admitted to practice before this Court and represent Lynn A. Smith, a Relief Defendant in the instant proceeding. I make this declaration in opposition to Plaintiff's motion to reconsider that portion of the Court's order filed on July 7, 2010 relating to the extension of the preliminary injunction herein to the assets contained in the David L. and Lynn A. Smith Irrevocable Trust U/A 08/04/04. I make this declaration based on my personal knowledge, court records, and on occasion, where noted, on information and belief.

2. I have carefully read and reviewed the declaration of David A. Stoelting in support of the motion to reconsider and despite thoughtful consideration over several days, I am unable to characterize it any more aptly than William Shakespeare did in Act 5, Scene 5 of Macbeth. "it is a tale told by an idiot, full of sound and fury, signifying nothing."

3. Mr. Stoelting's gratuitous and wholly unjustified attempt to disparage the ethics, character, and professionalism of myself as well as the attorney for the Trust is simply beneath contempt.

4. I first viewed the Private Annuity Agreement at issue in this case on the same day that Mr. Stoelting received it from Mr. Urbelis.

5. I concede that the Agreement demonstrates that the personal financial statement filed by my client, Lynn A. Smith, in this matter was inadvertently inaccurate. I have inquired of Mrs. Smith concerning this and although she did recall executing the Private Annuity Agreement after I showed it to her, she stated, understandably, that she had no recollection of it prior to my calling it to her attention, and reaffirmed that her intention when creating the Trust was to provide for her children.

6. I would note that Ms. Mehraban, Mr. Stoelting, Mr. McGrath and the entire SEC staff had multiple opportunities to examine Mrs. Smith under oath and it is hardly her fault that they never inquired about a Private Annuity Agreement with a "Private Annuity Trust", which all of them were able to read and should have been aware of.

7. The existence of a Private Annuity Agreement struck me then and strikes me now as irrelevant in light of the fact that this Court has frozen all of David L. Smith and most of Lynn A. Smith's assets.

8. The fact remains that, as a matter of law, Lynn Smith and David Smith have no interest whatsoever in the Irrevocable Trust. The only interest that either Lynn Smith or David Smith has is the contingent future contractual claim to annuity payments from the Trust, which will mature in the year 2015. My own reading of the freeze of the preliminary injunction currently in effect by order of this Court is that it would freeze David Smith's interest in future annuity payments like any other of his assets. As to Relief Defendant Lynn Smith, there is no basis to freeze her annuity payments since the source of those payments are from untainted Trust assets.

9. The SEC has proffered no new evidence of any kind which would support a motion for reconsideration. Everything that the SEC refers to as "new" evidence was either admitted into evidence at the Preliminary Injunction Hearing, known to it at the time of the hearing or certainly should have been known to it had it taken the time to inquire.

10. To the extent that this Court determines that the "Smith letter" has any relevancy to any issue in this case, I would call the Court's attention to the only reference to Lynn Smith contained in the letter:

"I have not shared any of this with Lynn, I assume because I have determined that it won't be helpful." (Smith letter at page 5)

11. As to the SEC's reliance on the Ian Meyer's civil complaint as evidence of the Smiths' intent to create the Trust to shield its assets from creditors, the SEC's characterization that the lawsuit was settled for \$200,000.00 is inaccurate and misleading. This lawsuit was resolved well before the creation of the Trust and the payment of \$200,000.00 was in consideration for his original investment. The lawsuit was resolved with a letter of apology from the plaintiff. (See Exhibit A attached hereto).

12. In the absence of new evidence the motion to reconsider is nothing more than an effort to gain a “second bite at the apple” by asking this Court to reverse its initial determination.

WHEREFORE, on behalf of Relief Defendant, Lynn A. Smith, I respectfully ask this Court to deny the SEC’s motion to reconsider.

DATED: September 3, 2010


JAMES D. FEATHERSTONHAUGH

EXHIBIT A

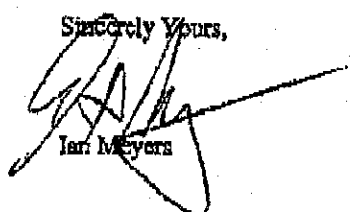
7597 Playa Rienta Way
Delray Beach, Florida 33446

Dear Mr. McGinn:

I am writing with respect to the settlement of the above-referenced matter, and was presented with information during the course of the proceeding leading me to conclude that many of the allegations set forth in the complaint in this matter were in substance inaccurate, that the transactions between First Integrated Capital Corp. and Integrated Alarm Services Group were done fairly and at an arms-length basis, and that the calculation of my purported damages was grossly erroneous.

Additionally, I have been presented with information that leads me to conclude that my claims against the professional service companies, including Gersten, Savaga, Kaplowitz, Wolf & Marcus, LLP, Friedman Billings Ramsey & Co., Inc., and PricewaterhouseCoopers LLP, were neither tenable nor valid.

Sincerely Yours,



Ian Meyers