

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS/DRH)

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

Defendants,

LYNN A. SMITH, and
NANCY MCGINN,

Relief Defendants, and

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

Intervenor.

DECLARATION OF DAVID STOELTING

I, David Stoelting, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a senior trial counsel in the New York Regional Office of the Securities and Exchange Commission ("SEC"). I make this declaration in support of the SEC's application for an Order to Show Cause why defendants Timothy M. McGinn ("McGinn") and David L. Smith

(“Smith”) should not be held in contempt for violating the preliminary injunction order entered on July 22, 2010 in this matter (the “PI Order”).

2. The PI Order enjoins Smith and McGinn from violating the antifraud and registration provisions of the federal securities laws pending a final disposition of this action. Docket Entry (“DE”) 96. Based on documents received in recent weeks by the SEC, however, it appears that McGinn and Smith are participating in an ongoing offering of unregistered securities to the public, that there are material misrepresentations and omissions in the offering documents, and that they have plans for additional offerings. In addition, it appears that investors are currently being solicited to invest in this offering. The SEC therefore seeks expedited review of its Order to Show Cause in order to stop the ongoing solicitation of investors.

3. On Friday, October 8, 2010, I was contacted by Paul Zindell, who told me that McGinn had solicited him to participate in a new securities offering formed by McGinn and Smith called Security Alarm Credit, LLC (“SAC”). Mr. Zindell subsequently provided the SEC with copies of the documents he received from McGinn, including a “draft” Private Placement Memorandum (“PPM”) as well as text messages with McGinn regarding the offering. Copies of these documents and communications are attached to the Declaration of Paul Zindell dated October 26, 2010.

4. The PPM identified both McGinn and Smith as Executive Vice Presidents of SAC. Zindell Decl. Exh. 4. at 4.

5. According to the PPM, the purpose of the offering is to loan funds to an entity called Anchor Alarm Center (“Anchor”), and it further states that \$425,000 – approximately 78%

of the proceeds – will be loaned to Anchor. The other approximately 22% will be taken by SAC for undefined “corporate purposes.” Zindell Decl. Exh. 4. at 7.

6. On October 25, 2010, the SEC served a document subpoena on Anchor.

7. The SEC also sent subpoenas to TD Bank (on October 20, 2010), identified in the draft PPM as the “Escrow Agent for Security Alarm Credit, LLC,” and to Quantum National Bank (on October 22, 2010), which is identified in the PPM as a lender to Anchor.

8. On October 27, 2010, TD Bank sent a letter to the SEC stating that “TD Bank does not have any responsive documents to this subpoena nor is TD Bank serving as an Escrow Agent for Security Alarm Credit, LLC.”

9. On October 25, 2010, Quantum provided to the SEC Anchor’s payment history for the Quantum Loan, attached as Exhibit 1.

10. On October 29, 2010, the SEC received the following documents from Quantum:

Exhibit 2: Note for the Quantum Loan dated September 7, 2005 and note modifications dated September 16, 2009 and May 27, 2010. Pursuant to the note modification agreements it obtained, Anchor was able to relieve itself of principal payments and paid only interest from September 2009 to May 2010.

Exhibit 3: Quantum’s internal Annual Review Form for the loan to Anchor dated October 2009. This document states “[m]any of Anchor Alarm’s customers are slow to pay invoices due which is affecting the borrower’s cash flow.”

11. On October 25, 2010, the SEC sent a subpoena to Carolyn Gracey, who is listed in the PPM as the Chairman, CEO and 100% owner of SAC.

12. On October 25, 2010, I spoke by phone to Ms. Gracey about the SAC offering. Ms. Gracey told me that “Tim [McGinn] is handling everything,” and that her primary involvement has been to type the PPM.

13. On October 26, 2010, Ms. Gracey told me that on Friday, October 22, 2010, she had received a handwritten letter from Smith stating that he resigned from SAC. The handwritten letter from Smith, dated October 19, 2010, is attached as Exhibit 4.

14. On October 26, 2010, the following documents were emailed to me by Gracey:

Exhibit 5: New York Department of State filing receipt for articles of organization for Security Alarm Credit, LLC, dated September 24, 2010.

Exhibit 6: Email chain between Gracey and McGinn. On October 13, 2010, McGinn wrote in reference to the SAC offering: "Been pitching." On October 19, 2010, McGinn wrote: "Nothing sold yet."

Exhibit 7: Revised Private Placement Memorandum for SAC, dated November 1, 2010 ("11/1/10 PPM").

15. The disclosures, terms, and conditions in the 11/1/10 PPM are substantially similar to those in the initial draft, except that Smith's name does not appear and he is no longer listed as an Executive Vice President. In addition, the minimum investment amount has been reduced from \$50,000 to \$10,000. The minimum offering amount has also been reduced from \$125,000 to \$15,000. Finally, the 11/1/10 PPM discloses that the Quantum Loan is secured by certain assets and a personal guarantee by Anchor's president.

16. On October 29, 2010, among other documents, the SEC received the following documents from Ms. Gracey:

Exhibit 8: Anchor loan term sheet and payoff schedule. According to this document, the two largest obligations to be extinguished are \$74,355 owed to Bill Knox and \$47,395 to the Phil Petty Revocable Trust.

Exhibit 9: Promissory Note dated May 1, 2002 from Mike Latty to Bill R. Knox in the amount of \$200,000, secured by 25% ownership in Anchor Alarm Center, Inc.

Exhibit 10: Promissory Note dated August 10, 2002 from "Mike Latty, President", to the Revocable Trust of Philip Lee Petty with Philip Lee

Petty, Trustee in the amount of \$150,000, secured by 10% ownership in Anchor Alarm Center, Inc. Although the Petty note was signed by "Mike Latty, President", it appears to be a personal loan. It does not identify any corporate entity as the obligor. The only reference to Anchor is that the obligor pledges "10% Ownership in Anchor Alarm Center, Inc." as security for the loan.

17. On November 2, 2010, among other documents, the SEC received the following exhibits from Anchor:

Exhibit 11: Email correspondence between Latty and McGinn dated October 12-14, 2010. In an email dated October 13, 2010, McGinn wrote, with respect to the Anchor loan: "My guess is funding on either Monday (the 18th) or Friday (the 15th)."

Exhibit 12: Documents that appear to constitute an executed version of the Credit Agreement dated October 12, 2010 for the Anchor loan, signed by Carolyn Gracey for Security Alarm Credit, LLC and Michael Latty for Anchor Alarm Center.

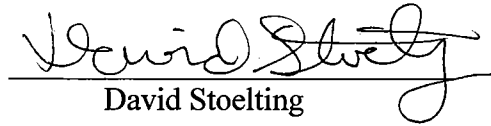
Exhibit 13: Documents that appear to constitute an executed version of the Grid Note dated October 12, 2010 for the Anchor loan, signed by Michael Latty for Anchor Alarm Center.

Exhibit 14: Documents that appear to constitute an executed version of the General Security Agreement dated October 12, 2010 for the Anchor loan, signed by Carolyn Gracey for Security Alarm Credit, LLC and Michael Latty for Anchor Alarm Center.

18. As the evidence shows the defendants are seeking to solicit investors, further delay could result in substantial prejudice to any investors. The SEC therefore has good cause to move by Order to Show Cause rather than Notice of Motion. I did, however, call Martin Russo, counsel for McGinn and Smith, this morning and left him a voicemail stating that the SEC would be filing this Order to Show Cause today.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 3, 2010


David Stoelting