

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.

**APPLICATION FOR AN EXPEDITED ORDER TO SHOW CAUSE
WHY DEFENDANTS TIMOTHY M. MCGINN AND DAVID L. SMITH
SHOULD NOT BE HELD IN CONTEMPT**

Plaintiff Securities and Exchange Commission hereby applies for the entry of an order, pending a final disposition of this action, directing defendants Timothy M. McGinn and David L. Smith to show cause why an order should not be entered:

- a. finding McGinn and Smith in contempt of the Preliminary Injunction Order (Dkt. 96);
- b. preliminarily enjoining McGinn and Smith from proceeding with the notes offering for Security Alarm Credit, LLC;
- c. preliminarily enjoining McGinn and Smith from having any involvement in the offer or sale of any securities without prior approval by the Court;
- d. freezing the assets of Security Alarm Credit, LLC; and
- e. directing the return of all distributions, payments or transfers made out of all accounts held by Security Alarm Credit, LLC.

In support of this Application, Plaintiff submits the following:

- a. Memorandum of Law in Support of Plaintiff's Application for an Order to Show Cause why Defendants Timothy M. McGinn and David L. Smith Should Not Be Held in Contempt
- b. Declaration of Paul Zindell dated October 26, 2010; and
- c. Declaration of David Stoelting dated November 2, 2010.

A proposed Order to Show Cause, allowing for the Court to set a briefing schedule, is attached as Exhibit A. A proposed Order, finding the defendants in contempt and imposing certain preliminary injunctive relief, is attached as Exhibit B.

Dated: New York, NY
November 3, 2010

Respectfully submitted,

s/ Kevin P. McGrath
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Of Counsel:

Andrew Calamari
David Stoelting
Lara Shalov Mehraban
Linda Arnold
Joshua Newville

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

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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.

**ORDER TO SHOW CAUSE WHY DEFENDANTS TIMOTHY M. MCGINN AND
DAVID L. SMITH SHOULD NOT BE HELD IN CONTEMPT**

On the Application of Plaintiff Securities and Exchange Commission for an Order directing defendants David L. Smith (“Smith”) and Timothy M. McGinn (“McGinn”) to show cause why an order should not be entered pending a final disposition of this action:

- a. finding McGinn and Smith in contempt of the Preliminary Injunction Order (Dkt. 96);
- b. preliminarily enjoining McGinn and Smith from proceeding with the notes offering for Security Alarm Credit, LLC;
- c. preliminarily enjoining McGinn and Smith from having any involvement in the offer or sale of any securities without prior approval by the Court;
- d. freezing the assets of Security Alarm Credit, LLC; and
- e. directing the return of all distributions, payments or transfers made out of all accounts held by Security Alarm Credit, LLC.

NOW, THEREFORE,

IT IS ORDERED that Defendants McGinn and Smith show cause, if there be any, to this Court at _____m. of the ____ day of November, 2010 in the Courtroom of Magistrate Judge Homer, at the James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York, 12207-2924, why this Court should not enter an Order pursuant to Rules 54 and 65 of the Federal Rules of Civil Procedure, Section 20 of the Securities Act, and Section 21 of the Exchange Act:

- (a) finding McGinn and Smith in contempt of the Preliminary Injunction Order,
- (b) preliminarily enjoining McGinn and Smith from proceeding with the notes offering for Security Alarm Credit, LLC,
- (c) preliminarily enjoining McGinn and Smith from having any involvement in the offer or sale of any securities without prior approval by this Court;
- (d) freezing the assets of Security Alarm Credit, LLC; and

(e) directing the return of all distributions, payments or transfers made out of all accounts held by Security Alarm Credit, LLC. .

IT IS FURTHER ORDERED that any opposition briefs be filed by _____ and any reply briefs be filed by _____.

Dated: _____, 2010
Albany, New York

UNITED STATES MAGISTRATE JUDGE

Exhibit B

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.

**ORDER HOLDING DEFENDANTS
TIMOTHY M. MCGINN AND DAVID L. SMITH IN CONTEMPT**

The Commission having filed the Complaint on April 20, 2010; and the Commission that same day having filed an Order to Show Cause seeking emergency relief; and the Court having entered an Order dated April 20, 2010 (the "April 20 Order") granting a temporary restraining order; asset freeze and other relief against defendants McGinn, Smith & Co., Inc.

(“MS & Co.”); McGinn, Smith Advisors LLC (“MS Advisors”); McGinn, Smith Capital Holdings Corp. (“MS Capital”); First Advisory Income Notes, LLC (“FAIN”); First Excelsior Income Notes, LLC (“FEIN”); First Independent Income Notes, LLC (“FIIN”); Third Albany Income Notes, LLC (“TAIN”); McGinn; Smith and Lynn A. Smith; and appointing a temporary receiver over MS & Co., MS Advisors, MS Capital, FAIN, FEIN, FIIN and TAIN, and all other entities McGinn or Smith control or have an ownership interest in, including but not limited to the entities listed on Exhibit A to the April 20 Order.

The Court having entered the Preliminary Injunction Order on July 22, 2010 (the “PI Order”).

The Commission having filed an Amended Complaint on August 2, 2010 seeking relief against MS & Co., MS Advisors, MS Capital, FAIN, FEIN, FINN, TAIN, McGinn, Smith, Lynn A. Smith, the Smith Trust, Geoffrey R. Smith, Lauren T. Smith and Nancy McGinn (collectively the “Defendants”), and Lynn A. Smith and Nancy McGinn (collectively the “Relief Defendants”), and adding an eighth claim for relief for fraudulent conveyance.

The Court having issued an Order on August 4, 2010, granting the Commission’s Application for an Order to Show Cause and Emergency Relief.

The Commission having filed an Application for an Order to Show Cause on November 2, 2010.

The Court finds that a proper showing, as required by 18 U.S.C. § 401 and 28 U.S.C. § 636(e)(4), as well as Section 20(b) of the Securities Act of 1933 (“Securities Act”), and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”), has been made for the relief granted herein.

It appears from the evidence presented that Defendants McGinn and Smith are in contempt of the PI Order and, unless restrained, will continue to violate the PI Order, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act and Rule 10b-5.

NOW, THEREFORE,

IT IS ORDERED that, pending a final disposition of this action, McGinn and Smith are enjoined from proceeding with the notes offering for Security Alarm Credit, LLC.

IT IS FURTHER ORDERED that, pending a final disposition of this action, McGinn and Smith are enjoined from having any involvement in the offer or sale of securities without prior approval by this Court.

IT IS FURTHER ORDERED that, pending a final disposition of this action, McGinn and Smith, and each of their financial and brokerage institutions, officers, agents, servants, employees, attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service or otherwise, and each of them, hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the direct or indirect control of Security Alarm Credit, LLC, whether held in its name or for its direct or indirect beneficial interest wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts, and directing each of the financial or brokerage institutions, debtors and bailees, or any other person or entity holding such assets, funds or other property of Security

Alarm Credit, LLC to hold or retain within its, his or her control and prohibit the withdrawal, removal, transfer or other disposal of any such assets, funds or other properties; *and* directing the return of all funds distributed, paid or transferred out of any accounts in the name of Security Alarm Credit, LLC.

IT IS FURTHER ORDERED that this Order shall be, and is, binding upon the Defendants McGinn and Smith and each of their respective officers, agents, servants, employees, attorneys-in-fact, subsidiaries, affiliates and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile service, or otherwise.

IT IS FURTHER ORDERED that the Preliminary Injunction Order dated July 22, 2010 remains in full force and effect, except to the extent modified by the Court Order entered on August 4, 2010 and this Order.

Dated: _____, 2010
Albany, New York

UNITED STATES MAGISTRATE JUDGE