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DAVID R. HOMER  
UNITED STATES MAGISTRATE JUDGE  
ALBANY, NEW YORK

November 8, 2010

The Honorable David R. Homer  
United States District Court for the  
Northern District of New York  
445 Broadway, Room 441  
Albany, NY 12207

Re: **United States v. McGinn Smith**

10cv457

Dear Judge Homer:

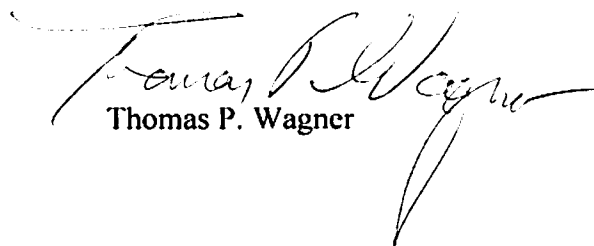
My wife and I are investors in Notes issued by McGinn Smith. I understand that defendant Lynn Smith is asking the Court to lift a freeze of assets. She has told the Court that she needs over \$200,000.00 to pay her lawyers and that she needs more than \$30,000.00 per month in order to pay her basic living expenses.

The arrogance of this request is merely a continuation of the way that Mrs. Smith's husband behaved toward investors who trusted him and relied upon his financial judgment.

We first learned of the problems at McGinn Smith when we sought to redeem our notes. I am enclosing for your reference my letter of protest to Mr. Smith. I ask the Court to take particular note of Mr. Smith's response, dated November 14, 2008. As you will see, Mr. Smith's approach was to argue arrogantly with every point or question we raised. In his view, the problem was our fault because we suffered from a "basic misunderstanding" of our investment.

Please add our voices to the many others who have implored you not to let these people waste one more dollar of the money that belongs to investors who trusted them.

Very truly yours,

  
Thomas P. Wagner

TPW/mmk  
Enclosures

October 24, 2008

1006 Childs Ave.  
Drexel Hill, PA 19026

Mr. David L. Smith  
First Advisory Income Notes, LLC  
99 Pine St.  
Albany, NY 12207

*RE: Notes 5527 and 5259*

Dear Mr. Smith:

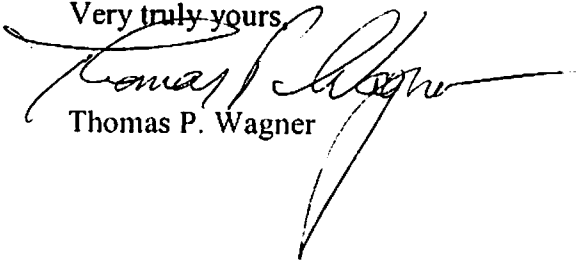
We have received your letters dated October 22, 2008. We interpret these long letters to mean that you are declining to redeem the two notes referenced above on their maturity date.

You included a "plan" that you are apparently intending to implement with or without our consent, and with no input from us. Your letter makes the self-serving judgment that your plan is "fair." With all due respect, "fair" would be to do what you said you would do when you accepted our money. We are not impressed by the "fairness" of being told that we will likely receive our money back in a slow dribble of insignificant payments over 10 years. We can see why this is good for you and your company. It is not good for us.

Your letter also makes the statement that "We have communicated with some of you earlier in the year." We take it from this statement that you chose to communicate with some investors and not others while you were aware of your intention to default on these notes and while you were preparing your "plan" of action. This leads us to conclude that your plan was designed to favor some investors over others. We know that no one communicated with us about this problem in any way. Rather, we had to learn of it by making what we believed was a routine request for redemption. This is all the more upsetting in light of your statement that you were communicating with "some" of the investors.

The plan you announced with your letter is unacceptable to us. Please advise us promptly as to the procedure for declaring the Fund in default.

Very truly yours,

  
Thomas P. Wagner

Cc: Lex & Smith Assoc.

November 14, 2008

Mr. Thomas P. Wagner  
1006 Childs Avenue  
Drexel Hill, PA 19026

Dear Mr. Wagner,

I am in receipt of your letter of October 24, 2008 and would offer the following response. Your letter suggests a basic misunderstanding of both your investment and the current situation that First Advisory Income Notes, LLC finds itself. Your investment represents a Senior Subordinated Note, standing behind a tranche of Senior Notes in priority of both interest and principal payment. While you may question whether the proposed plan is fair, the fact is that at this time there is not sufficient value of assets in the Company to meet its obligations. Without a plan, assets would be sold and the Senior Subordinated and Junior Tranches would unlikely receive the return of their capital.

Your comment that this plan is good for me and my company again shows a lack of understanding of the structure of First Advisory. First Advisory is a single purpose limited liability company whose sole purpose was to make investments designed to generate sufficient income to meet its interest payments and repay its obligations. "My Company's" only benefit was a management fee and commission fees paid to the placement agent, McGinn, Smith & Company, Inc., who in turn paid their salesmen, both of which have been waived by us. Thus, our "benefit" is to manage the fund for the next ten years without compensation and pay our salesmen from other resources.

Your assumption that we "chose to communicate with some investors and not others while you were aware of your intention to default" is both wrong and defamatory. The earlier communication referred to was to Junior Subordinated Noteholders in January and April of 2008 telling them that their interest payments were being reduced as a result of the company's insufficient income. We did not communicate to Senior Noteholders nor Senior Subordinated Noteholders before the communication of October 22, 2008, and at that time of the communication to the Junior Noteholders have any intention of defaulting on the Senior and Senior Subordinated obligations.

There is no procedure for declaring the FUND in default. The note indenture specifically states that "a failure to pay interest or principal on a note within 30 days after the due date for such payment constitutes an event of default". Thus, your principal and interest payments due on November 15, 2008, which we have stated will not be paid on time, will be considered to be in default on December 15, 2008.

If I may be of any further assistance in clarifying the status of your investment, please do not hesitate to contact me.

Sincerely,

David L. Smith  
Managing Partner  
MS Advisors

DLS/gbg

CC: Bill Lex