

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

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,

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

Defendants, and

LYNN A. SMITH,

Relief Defendant and

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

Intervenor.

DECLARATION OF JILL A. DUNN

I, Jill A. Dunn, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury, the following:

1. I respectfully submit this declaration to correct certain statements which appear in my Declaration dated September 3, 2010 (the "September Declaration").
2. In paragraph 36 of my September Declaration I stated as follows: "Neither I nor Mr. Wojeski had any documents in our possession relating to the private annuity other than the

courtesy copy of the documents I received from Mr. Urbelis on July 27 when Mr. Stoelting received them.”

3. In assisting with the Trust’s response to Plaintiff’s discovery demands, and in preparing for the evidentiary hearing scheduled for November 16, 2010, I became aware that on July 21, 2010, David Wojeski e-mailed to me the documents attached to this Declaration as Exhibit A. I did not recall receiving or seeing the document attached as Exhibit A at the time I prepared the September Declaration, and my recollection has not been refreshed by seeing Exhibit A.

4. My attention on July 20, 21, and 22, 2010, was focused heavily on the Trust’s real estate closing which took place on July 22, 2010, and on other unrelated client matters and personal issues, including a death in the family. This might explain why I failed to remember the documents attached as Exhibit A when I prepared my September Declaration.

5. I make this declaration for the sole purpose of correcting the record before the Court, and no actual or implied waiver of any applicable privilege, including the attorney-client and attorney work product privileges, is intended.

DATED: November 15, 2010

s/Jill A. Dunn
Jill A. Dunn (Bar Roll No. 506942)
Attorney for Intervenor
THE DUNN LAW FIRM PLLC
99 Pine Street, Suite 210
Albany, New York 12207-2776
Telephone (518) 694-8380
Fax (518) 935-9353
Email: JDunn708@nycap.rr.com

Exhibit A

Jill Dunn

From: David M. Wojeski [dwojeski@wojeskico.com]
Sent: Wednesday, July 21, 2010 10:21 AM
To: jdunn708@nycap.rr.com
Attachments: Pvt Annuity.pdf

<<Pvt Annuity.pdf>>

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Dave,

Per our conversation, please see the attached. The first four pages are from the annuity contract. The three pages after that are documents that were in the file that I thought might be relevant.

Nanci

Nanci L. Papp, CLU, ChFC
Vice President & Partner
Southtowns Financial Group, Inc.
6195 W. Quaker St.
Orchard Park, NY 14127
office: (716) 662-0070
toll free fax: (888) 461-2613

PLEASE NOTE OUR NEW FAX NUMBER

SFG
Circle No
Website

Attorney:
Bruce Hoover
716-566-5432

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Policy Delivery Receipt

PRIVATE ANNUITY CONTRACT


Annuitant(s): David L. & Lynn A. Smith

Contract Date: August 31, 2004

Face Amount: \$4,447,000

Rate: 4.6%

I acknowledge that I received the above number contract certificate on the date of this receipt.

Owner's Signature  Date 10/17/04

Agent's Signature 

COPY

PRIVATE ANNUITY CONTRACT

BETWEEN

DAVID L. SMITH & LYNN A. SMITH, AS TRANSFERORS

AND

THE DAVID L. & LYNN A. SMITH IRREVOCABLE TRUST

U/A DATED AUGUST 31, 2004, TRANSFEREE

CONTRACT TERMS

Effective Date: August 31, 2004

First Payment Date: September 26, 2015

Term of Contract: Last to Die of Transferors

Face Amount: \$4,447,000

Periodic Payment: \$489,932

Annuity Interest Rate: 4.6%



Private Annuity

8/7/2004

Transfer Date: 8/2004
 \$7520 Rate: 4.60%
 FMV of Property: \$7,389,346
 Client's Basis: \$387,500
 Payment Period: Annual
 Payment Timing: End
 Number of Annuitants: 2
 Age(s): 68, 68

Annuity Factor: 15.1028
 Payout Frequency Factor: 1.0000
 Annual Payout: \$489,932

Joint Life Expectancy: 31.1 Years
 Reg. 1.72-5(a)(2) Life Exp. Adj. Factor: -0.5
 Tax-Free Portion: \$12,683
 Capital Gain Portion: \$229,145
 Ordinary Income Portion: \$248,123

Tax Breakdown of Payments to Seller

