

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 DAVID M. WOJESKI

I, David M. Wojeski, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury, the following:

1. I respectfully submit this declaration to clarify a statement made in my Declaration dated October 6, 2010 (the "October Declaration") (Document 147).
2. In paragraph 2 of my October Declaration I stated as follows: "The first I learned of the existence of an annuity agreement was in late July, when my attorney informed me that the former trustee had just produced the agreement simultaneously to her and to the SEC's counsel."

In the interests of clarity, my statement should have read: "The first I learned of the possible existence of an annuity was in late July, when I received documents faxed to me by David Smith."

3. In gathering documents to assist with the Trust's response to Plaintiff's discovery demands, I produced a five-page document that David Smith faxed to me on July 20, 2010. That document is attached to this Declaration as Exhibit A. This document did not contain a signed contract or a copy of the "Private Annuity Agreement" that was apparently subsequently produced by Mr. Urbelis.

4. On October 6, when I reviewed the Declaration drafted by my attorney, eleven (11) weeks had passed since the events at issue. At that time, I did not realize that the document attached hereto as Exhibit A was different from the document she received from Mr. Urbelis on July 27 and, in briefly reviewing the draft declaration, I thought that the two events had occurred at the same time.

5. I make this declaration for the sole purpose of clarifying my prior Declaration, and no actual or implied waiver of any applicable privilege is intended.

DATED: November 17, 2010

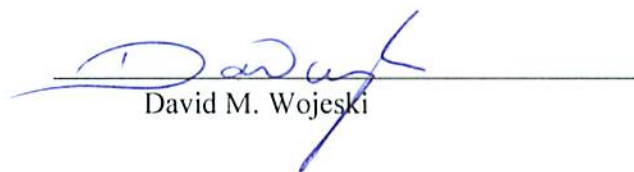

David M. Wojeski

Exhibit A

JUN-05-2012 17:09 From: DALE
5185831492
Attention: David Smith (5185831492)

To: 5184771302
11:11 07/20/10GMT-04 Pg 01-08

P.1/5

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
Sunshine 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

<input type="checkbox"/> X SFG <input type="checkbox"/> Circle No <input type="checkbox"/> Website
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Attorney:
Bruce Hoover
716-566-5432

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Registered Representative of and securities offered through MHI Investors Services, Inc. (MHI-ISI). New Office located at 1295 State Street, Springfield, MA 01111, (413) 731-8400. Member SIPC (www.sipc.org). Transactions may not be accepted by e-mail, fax, or voicemail.

JUN-05-2012 17:09 From: DAVE

5185831492

To: 5184771382

P. 2/5

11:11 07/20/05MT-04 Pg 02-08

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 10/12/04

Agent's Signature 

JUN-05-2012 17:09 From:DAVE

5185831492

To:5184771302

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11:11 07/20/10GMT-04 Pg 09-08

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%



JUN-05-2012 17:09 From: DAVE

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To: 5184771302

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11:11 07/20/10 GMT-04 Pg 04-03

Private Annuity

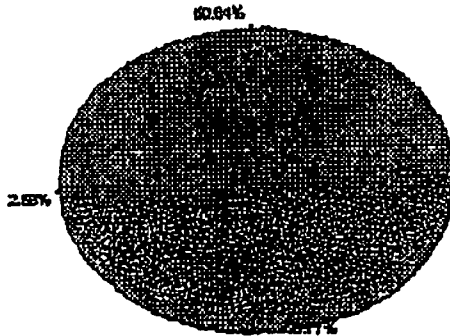
8/7/2004

Transfer Date: 8/2004
 IRS20 Rate: 4.60%
 FMV of Property: \$7,398,346
 Client's Basis: \$387,500
 Payment Period: Annual
 Payment Timing: End
 Number of Annuitants: 2
 Age(s): 68, 59

Annuity Factor: 15.1023
 Payout Frequency Factor: 1.0000
 Annual Payout: \$489,832

Joint Life Expectancy: 31.1 Years
 Reg. 1.72-5(a)(2) Life Exp. Adj. Factor: -0.5
 Tax-Free Portion: \$12,663
 Capital Gain Portion: \$229,145
 Ordinary Income Portion: \$248,123

Tax Breakdown of Payments to Seller



60.84% Ordinary Income 2.56% Tax-Free 48.77% Capital Gain

JUN-05-2012 17:09 From:DAVE 5185831492

To:5184771302
11:11 07/20/10GMT-04 Pg 05-09

P.5/5

\$ 4,447,000 4.60%

0.000127778 daily
0.003833333 monthly

3985 days of interest until 1st payment

\$7,399,346.07 Future Value at date of distribution