

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,  
LYNN A. SMITH, GEOFFREY R. SMITH, 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,

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

*Defendants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants, and*

GEOFFREY R. SMITH, Trustee of the David L.  
and Lynn A. Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

---

**CERTIFICATE OF SERVICE**

I, Scott J. Ely, of Featherstonhaugh, Wiley & Clyne, LLP, hereby certify that on the 15<sup>h</sup> day of February, 2011 the Notice of Motion to Dismiss and Memorandum of Law in Support on behalf of Defendants David L. Smith and Lynn A. Smith Irrevocable Trust U/A 8/04/04, and its Beneficiaries was filed electronically with the Clerk of the United States District Court, Northern District of New York, using the CM/ECF System, which sent notification of such filing to the following:

David Stoelting  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[stoeltingd@sec.gov](mailto:stoeltingd@sec.gov)

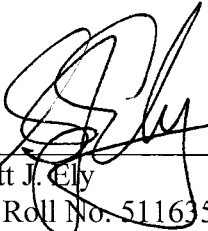
Kevin McGrath  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
[mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)

William J. Dreyer  
Dreyer Boyajian LLP  
*Attorneys for David L. Smith*  
75 Columbia Place  
Albany, New York 12207  
[wdreyer@dreyerboyajian.com](mailto:wdreyer@dreyerboyajian.com)

E. Stewart Jones, Jr.  
E. Stewart Jones Law Firm  
*Attorneys for Timothy M. McGinn*  
28 Second Street  
Troy, New York 12181  
[info@esjlaw.com](mailto:info@esjlaw.com)

Nancy McGinn  
29 Port Huron Drive  
Schenectady, NY 12309  
[nemcginn@yahoo.com](mailto:nemcginn@yahoo.com)

William Brown, Esq.  
Phillips Lytle LLP  
*Attorneys for Receiver*  
3400 HSBC Center  
Buffalo, N.Y. 14203  
[WBrown@phillipslytle.com](mailto:WBrown@phillipslytle.com)

  
\_\_\_\_\_  
Scott J. Cly  
Bar Roll No. 511635