

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff-Appellee,*

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, NANCY McGINN,

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

**NOTICE OF APPEAL**

*Defendants,*

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

*Defendants-Appellants,*

LYNN A. SMITH and NANCY McGINN,

*Relief Defendants,*

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

*Intervenor.*

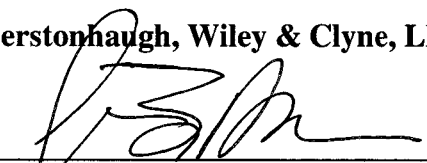
---

Notice is given that Defendants-Appellants Geoffrey R. Smith, successor trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 and its beneficiaries, Geoffrey R. Smith and Lauren T. Smith hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the Order of the District

Court, Northern District of New York, U.S. Magistrate David R. Homer entered in this action on the 11<sup>th</sup> day of January 2011, which denied Defendant-Appellants' Motion for Reconsideration.

DATED: March 7, 2011

**Featherstonhaugh, Wiley & Clyne, LLP**

By: 

Stephen B. Hanse, Esq.

Bar Roll No. 514950

*Attorneys for Defendants-Appellants*

*Geoffrey R. Smith, Trustee for the*

*David L. and Lynn A. Smith Irrevocable*

*Trust U/A 8/04/04, Geoffrey R. Smith*

*and Lauren T. Smith*

99 Pine Street, Suite 207

Albany, NY 12207

Tel: (518) 436-0786

Fax: (518) 427-0452

TO: David Stoelting  
Securities and Exchange Commission  
*Attorney for Plaintiff*  
3 World Financial Center, Room 400  
New York, NY 10281  
Tel: (212) 336-0174  
Fax: (212) 336-1324  
[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  
Tel: (212) 336-0533  
Fax: (212) 336-1324  
[mcgrathk@sec.gov](mailto:mcgrathk@sec.gov)

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

William J. Dreyer  
Dreyer Boyajian LLP  
*Attorneys for David L. Smith*  
75 Columbia Place  
Albany, NY 12207  
Tel: (518) 463-7784  
Fax: (518) 463-4039  
[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, NY 12181  
Tel: (518) 274-5820  
Fax: (518) 274-5875  
[info@esjlaw.com](mailto:info@esjlaw.com)

William Brown, Esq.  
Phillips Lytle LLP  
*Attorneys for Receiver*  
3400 HSBC Center  
Buffalo, NY 14203  
Tel: (716) 847-7089  
Fax: (716) 852-6100  
[WBROWN@phillipslytle.com](mailto:WBROWN@phillipslytle.com)