

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

No. 10-CV-457  
(GLS/DRH)

McGINN, SMITH & CO., INC., et al.,

Defendants.  
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**ORDER**

A conference was held on May 25, 2010 with counsel for all appearing parties concerning discovery issues related to the motion of the plaintiff Securities and Exchange Commission (SEC) for a preliminary injunction. In particular, from that conference, it appears that the relief defendant Lynn A. Smith (“Lynn Smith”) has noticed for deposition Lara Shalov Mahraban (“Mahraban”), an attorney in the Enforcement Division of the New York Regional Office of the SEC. In support of the SEC’s motion for a preliminary injunction, the SEC submitted the declaration of Mahraban. Mahraban Decl. (Docket No. 4-3). That declaration generally summarizes documents and information from a variety of sources. *Id.* However, the declaration also reports the results of interviews with unnamed investors conducted by Mahraban. *See, e.g.*, Mahraban Decl. at ¶ 11 (“Moreover, several investors that I interviewed with another SEC staff attorney stated that MS & Co. [McGinn and David Smith’s company] did not provide them with [certain information] prior to their investment. One investor told us that Smith steered him away from investing in blue chip stocks such as General Electric as too risky, and told him that the MS & Co. private placements were safer.”)

The SEC objects to the deposition of Mahraban on various grounds including that her testimony is protected by the attorney-client privilege and work product doctrine. The SEC is

scheduled to take the deposition of Lynn Smith prior to the hearing on the motion for a preliminary injunction. It appears to the Court that any claim of attorney-client privilege, work product doctrine, or other such protection such as any law enforcement privilege has been waived to the extent that it is reported in Mahraban's declaration and relied upon for relief here by the SEC. To that extent, therefore, Lynn Smith is entitled to depose Mahraban. However, statements in the declaration merely summarizing the contents of reports, documents, and other records are not properly the subject of a deposition of Mahraban where the records themselves are available.

WHEREFORE, it is hereby

**ORDERED** that:


1. Lynn Smith's request for an order compelling SEC to produce Mahraban for oral deposition on June 1, 2010 is **GRANTED** to the extent that Lynn Smith may depose Mahraban concerning the results of Mahraban's interviews such as that reported above to the extent disclosed in Mahraban's declaration;

2. Defendants McGinn and David Smith are granted an extension until May 27, 2010 at 5:00 p.m. to file any papers opposing SEC's motion for a preliminary injunction; and

3. On or before June 1, 2010 at 12:00 Noon, all parties shall disclose to all other parties (a) a list of the witnesses, if any, the party intends to call to testify at the hearing on June 2, 2010, and (b) copies of the exhibits, if any, which any party intends to introduce at evidence at the hearing on June 2, 2010.

**IT IS SO ORDERED.**

Dated: May 25, 2010  
Albany, New York

  
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David R. Homer  
U.S. Magistrate Judge