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June 4, 2010

Hon. David R. Homer
U.S. Magistrate Judge
Room 441
James T. Foley U.S. Courthouse
Albany, New York 12207

Re: Securities Exchange Commission v. McGinn, Smith & Co., Inc., et al.
Case No: 1:10-CV-457 (GLS/DRH)

Dear Judge Homer:

This letter is in response to several factually incorrect statements made by the Plaintiff in its June 3, 2010 4:23 p.m. Memorandum of Law in Response to: (1) Relief Defendant Lynn A. Smith's Opposition to Plaintiff's Motion for a Preliminary Injunction; and (2) Intervenor's Order to Show Cause ("Memorandum").

Specifically, on Page 9 of its Memorandum, the Plaintiff states:

Indeed, no party, including the relief defendant and Intervenor, argues that plaintiff has failed to meet its burden of showing a likelihood of success.

Throughout this matter, the Relief Defendant has in its responses previously and continues to argue that the Plaintiff will fail to meet its substantial burden of demonstrating a likelihood of success on the merits. Not only is this statement by the Plaintiff factually wrong, not supported by the record and prejudicial to the Relief Defendant, it evidences a disregard for the purpose of a preliminary injunction hearing. As the Plaintiff should be well aware, in seeking a preliminary injunction to freeze assets, it is the Plaintiff's burden alone to show a likelihood of success. SEC v. Unifund Sal, 910 F.2d 1028 (2nd Cir. 1990). As the Second Circuit has stated, preliminary injunctions may have serious consequences, and "like any litigant, the Commission should be obliged to

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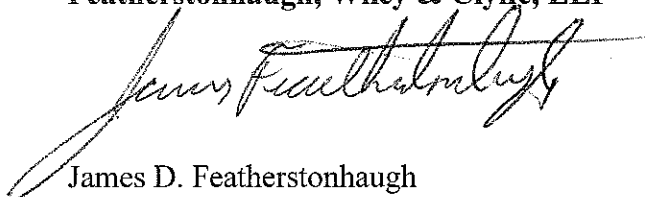
make a more persuasive showing of its entitlement to a preliminary injunction the more onerous are the burdens of the injunction it seeks.” Id. Moreover, an unsupported statement in a memorandum of law is entitled to no evidentiary weight. McFarlane v. Chao, 2007 U.S. Dist. LEXIS 99188 (S.D.N.Y. 2007). See also, Rexnord Holdings v. Bidermann, 21 F.3d 522, 526 (2nd Cir. 1994).

An additional example of a factually incorrect statement made by the Plaintiff is found on the very first page of its Memorandum. Specifically, the Plaintiff states that the objections of the Relief Defendant and the Intervenor are limited to the asset freeze over three categories of assets. However, this representation to the Court is factually incorrect and misrepresents the broad scope of the Plaintiff’s asset freeze. To be sure, the Relief Defendant has continually objected to the entire asset freeze which not only encompasses the assets referenced by the Plaintiff, but also encompasses her home in Saratoga, New York, her property on the Great Sacandaga Lake, her IRA account, her personal checking account and her personal property.

Thank you for your consideration.

Very Truly Yours,

Featherstonhaugh, Wiley & Clyne, LLP



James D. Featherstonhaugh

JDF:cr

cc: David Stoelting
Michael Koenig
Jill Dunn