

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.

ACCOUNTING BY DAVID L. SMITH

DAVID L. SMITH, hereby declares under the penalty of perjury:

1. I submit this accounting pursuant to the April 4, 2012 and June 20, 2012

Memorandum-Decision and Orders by the Honorable David R. Homer. See Dkt Nos. 478, 501.

2. The Orders referenced above permitted the assets obtained from my 401-k account, IRA, and irrevocable life insurance trust to be released from the preliminary injunction to pay counsel for attorneys' costs and fees in my parallel criminal case. *United States of America v. Timothy M. McGinn and David L. Smith*, 1:12-cr-028 (DNH).

3. Currently, the liquidation of the above-referenced assets is still in process and therefore, no amount has been received or delivered to counsel for deposit into an escrow account for the payment of legal costs.

4. Specifically, Saratoga County Surrogate's Court must be petitioned so that a trustee may be appointed for the irrevocable life insurance trust before a loan may be taken against it. Consents are being obtained so that the petition can be made as soon as possible.

5. My 401-k account has been transferred from the McGinn Smith Incentive Savings Plan to a John Hancock IRA under the request of the Receiver in this case. I intend to withdraw an amount of \$31,000.00 by the end of 2012 and \$151,000.00 in 2013, for tax consequence reasons.

6. My IRA is currently held by RMR Wealth Management/Dinosaur Securities, LLC and the court-approved release amount of \$8,135.00 will be liquidated by September 30, 2012.

7. Once funds are received by any of the above assets, subject to the conditions set forth by this Court, my counsel will deposit the funds into an escrow account pending further order from this Court and a second accounting will be made at that time.

Pursuant to 18 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2012


DAVID L. SMITH