

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,*

vs.

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

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

*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.*

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**DECLARATION OF WILLIAM J. BROWN, AS RECEIVER  
IN CONNECTION WITH THE MOTION OF DEFENDANT/  
INTERVENOR, GEOFFREY R. SMITH, TRUSTEE OF THE  
DAVID L. AND LYNN A. SMITH IRREVOCABLE  
TRUST U/A 8/04/04 MOTION TO VACATE**

1. I am the Receiver in this action pursuant to a Preliminary Injunction Order (Docket No. 96). I make this Declaration to place into the record certain facts relevant to the Motion of Defendant/Intervenor, Geoffrey R. Smith, Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 Motion to Vacate (Docket No. 568) (“Motion”).

2. On April 4, 2012 following entry that day of the Court's Order granting the Receiver the power to manage the assets of the Trust including the sale or other disposition of the so-called Smith Lake House (Docket No. 478 at page 18)<sup>1</sup>, I wrote to counsel for the Trust requesting certain information including a general report of "the current state and location of all Trust assets" and requesting a face-to-face meeting on or about April 11, 2012 "to, among other things, obtain the perspective of the Trustee [of the Smith Trust] with respect to each of the Trust assets". I subsequently met with the Trustee and received certain information about the assets of the Trust. The Trustee has, from time to time, communicated with me since that meeting and, to the best of my recollection, has not raised with me any desire or request to diversify Trust assets.

3. Since that time, I have worked on a transparent and bilateral basis with the Trustee. This has included the payment of utility and insurance bills on a periodic basis for the Smith Lake House property when those bills were provided by the Trustee to the Receiver, the payment of real property taxes on the Smith Lake House property, and the payment of federal and state taxes for the Trust.

4. To date, \$100,000 has been withdrawn by the Receiver from one of the Trust accounts at the Kinderhook Bank. The Receiver has spent the following sums in preservation and management of the Trust's assets:

- a. Utilities, Insurance and Real Property Taxes for Smith Lake House - \$39,077.44; and
- b. New York State and Federal Income Taxes - \$39,022.97.

5. A listing of the payments made to date by the Receiver in connection with the Trust assets are listed on the attached registers from the Receiver's accounting system.

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<sup>1</sup> A prior Order of the Court at Docket No. 342 at page 41 gave the Receiver the authority to lease, sell or otherwise dispose of all or a portion of the Smith Lake House property.

6. Since the Second Circuit stayed the sale of the Smith Lake House property in October 2011, my attempts to consider what disposition was appropriate, including the listing of the property for sale, were at least temporarily terminated although I previously inspected the property with two real estate brokers and the Trustee prior to the entry of that stay order by the Second Circuit. The Smith Lake House property actually consists of three homes on valuable beachfront real estate.

7. The Trustee has indicated to the Receiver that the Trustee or his designees were physically maintaining the Smith Lake House property and would continue to do so.

8. Recently, however, the Receiver has not been receiving any utility bills from the Trustee. Accordingly, in order to preserve assets, the Receiver has been paying the utility companies amounts based upon prior payments so as to continue utility service.

9. The Receiver has been requested as recently as April 2013 to provide information so that Trust tax returns could be prepared for the 2012 calendar year and has continued a practice of transparency with the Trustee and his family.

10. The Receiver has and will continue to receive proposed instructions from and consult with the Trustee of the Trust with respect to the Trust consistent with my prior practices with regard to the maintenance, listing and sale of both the Smith Vero Beach property and the McGinn residence.

Dated: June 4, 2013

/s/ William J. Brown  
William J .Brown

## William Brown as Receiver for McGinn, Smith Et El

6/3/2013 10:27 AM

Register: Smith Lake House Expenses

From 01/01/2012 through 06/03/2013

Sorted by: Date, Type, Number/Ref

<u>Date</u>	<u>Ref.</u>	<u>Payee</u>	<u>Account</u>	<u>Memo</u>	<u>Decrease</u>	<u>C</u>	<u>Increase</u>	<u>Balance</u>
06/12/2012		National Grid	WJ Brown Receiver				99.99	99.99
07/03/2012	1102	National Grid	WJ Brown Receiver				51.12	151.11
07/03/2012	1103	Preferred Mutual Ins...	WJ Brown Receiver				71.20	222.31
07/03/2012	1104	Preferred Mutual Ins...	WJ Brown Receiver				152.90	375.21
08/13/2012		National Grid	WJ Brown Receiver				38.45	413.66
08/13/2012		National Grid	WJ Brown Receiver				33.58	447.24
08/13/2012		National Grid	WJ Brown Receiver				33.70	480.94
09/17/2012		National Grid	WJ Brown Receiver				118.28	599.22
09/18/2012		Preferred Mutual Ins...	WJ Brown Receiver				337.80	937.02
09/27/2012		Preferred Mutual Ins...	WJ Brown Receiver				167.90	1,104.92
10/17/2012	1092	Preferred Mutual Ins...	WJ Brown Receiver				424.60	1,529.52
10/25/2012		Preferred Mutual Ins...	WJ Brown Receiver				167.90	1,697.42
10/29/2012		Preferred Mutual Ins...	WJ Brown Receiver				56.60	1,754.02
11/16/2012	1105	Preferred Mutual Ins...	WJ Brown Receiver				887.40	2,641.42
11/16/2012	1106	National Grid	WJ Brown Receiver				256.64	2,898.06
12/04/2012	1107	National Grid	WJ Brown Receiver				99.01	2,997.07
12/27/2012	1108	Fulton county Treasu...	WJ Brown Receiver				729.96	3,727.03
12/27/2012	1109	Fulton county Treasu...	WJ Brown Receiver				1,458.96	5,185.99
12/27/2012	1110	Fulton county Treasu...	WJ Brown Receiver				1,444.44	6,630.43
12/27/2012	1111	Fulton county Treasu...	WJ Brown Receiver				3,339.45	9,969.88
12/27/2012	1112	Fulton county Treasu...	WJ Brown Receiver				4,226.96	14,196.84
12/27/2012	1113	Fulton county Treasu...	WJ Brown Receiver				10,662.87	24,859.71
12/28/2012		Preferred Mutual Ins...	WJ Brown Receiver				386.00	25,245.71
12/28/2012		National Grid	WJ Brown Receiver				53.08	25,298.79
01/21/2013	1086	National Grid	WJ Brown Receiver				60.00	25,358.79
02/12/2013	1115	Linda E. Eastman	WJ Brown Receiver				2,934.09	28,292.88
02/12/2013	1116	Linda E. Eastman	WJ Brown Receiver				9,397.95	37,690.83
02/12/2013	1117	Linda E. Eastman	WJ Brown Receiver				1,274.29	38,965.12
03/06/2013	1119	National Grid	WJ Brown Receiver				60.00	39,025.12
04/16/2013	1120	National Grid	WJ Brown Receiver				52.32	39,077.44

William Brown as Receiver for McGinn, Smith Et El

6/3/2013 10:27 AM

Register: Smith Trust

From 01/01/2013 through 06/03/2013

Sorted by: Date, Type, Number/Ref

<u>Date</u>	<u>Ref.</u>	<u>Payee</u>	<u>Account</u>	<u>Memo</u>	<u>Decrease</u>	<u>C</u>	<u>Increase</u>	<u>Balance</u>
02/12/2013	1114	Commissioner of Tax...	WJ Brown Receiver				8,803.07	8,803.07
03/06/2013	1118	Internal Revenue Ser...	WJ Brown Receiver				30,219.90	39,022.97