

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/CFH)

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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**ORDER IN AID OF ADMINISTRATION
OF MEMORANDUM-DECISION AND ORDER
(DOCKET No. 647)**

WHEREAS, the Court previously granted the Commission’s request for a preliminary injunction order freezing the assets of the David L. and Lynn A. Smith Irrevocable Trust (Docket No. 104) (the “Freeze Order”); and

WHEREAS, the three properties located on or adjacent to Sacandaga Lake in Broadalbin, New York titled to the David L. and Lynn A. Smith Irrevocable Trust (“Smith Trust”) are currently subject to the Freeze Order (collectively, the “Sacandaga Lake Property”); and

WHEREAS, by Memorandum-Decision and Order dated November 22, 2013 (Docket No. 647) (“Sacandaga Property MDO”), the Court directed the Receiver to sell the Sacandaga Lake Property; and

WHEREAS, the Receiver has requested in a letter Motion dated December 20, 2013 the entry of an Order in Aid of Administration to govern the sale of the Sacandaga Lake Property in a form similar to the Orders which governed the prior sales of the Smith Vero Beach property and the McGinn Niskayuna residence;

NOW, THEREFORE,

I.

IT IS ORDERED that the Court-appointed Receiver, William J. Brown (the “Receiver”), is given sole authority to take all necessary steps to oversee a sale of the Sacandaga Lake Property, including the retention of a real estate agent, and the Freeze Order is hereby modified to permit the Receiver or the Smith Trust (with the Receiver’s prior written consent) to enter into a contract for the purchase and sale of the Sacandaga Lake Property, and to administer the sale process, maintain the property in the interim, and close a sale of the Sacandaga Lake Property subject to the following terms and conditions:

A. The Receiver shall provide the Smith Trust trustee, his counsel (Linnan & Fallon, LLP), and the Commission with a copy of any contract proposed to be accepted for sale of all or a portion of the Sacandaga Lake Property (the “Contract”) within three days of its execution, along with a proposed list of distributions (the “Distribution List”) to be made from the proceeds of such sale. The Distribution List may include, among other things, any liens on the Sacandaga Lake Property, and any usual and customary costs of closing, including broker, attorney, and recording fees, and transfer taxes.

B. The Smith Trust may, within two business days from the delivery of the Contract and the Distribution List, object to the terms of the Contract, and such objections may include the sale price or the proposed distributions. The Court will resolve such objections on motion by the Smith Trust or the Receiver if the parties do not reach agreement on such objections. The Smith Trust, the Commission, and the Receiver shall not object to a request for an expedited hearing.

C. The balance of any funds remaining after payment of the Distribution List shall be deposited into an interest bearing bank account of the Receiver to be held in escrow until further order of this Court.

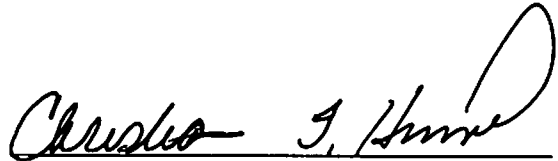
D. The Commission and the Receiver shall provide such documents any purchaser of all or a portion of the Sacandaga Lake Property may reasonably require to evidence the Commission's and the Receiver's consent and authority to convey title to all or any portion of the Sacandaga Lake Property.

E. The Receiver shall consult with the Smith Trust, and the Smith Trust shall cooperate with the Receiver in the maintenance, access, listing, showing and closing of the sale of all or a portion of the Sacandaga Lake Property. In that regard, the Receiver (i) shall take an inventory of the visible personal property in the three cottages on the Sacandaga Lake Property, (ii) is authorized to change on or after January 9, 2014 the three cottage door locks and provide a set of new lock keys to the Smith Trust trustee or his designee, the realtor engaged by the Receiver to list the Sacandaga Lake Property for sale, and the Receiver, (iii) shall procure and maintain insurance in such amounts and coverages as the Receiver deems appropriate, (iv) shall be responsible to maintain and restore utility service, (v) shall otherwise oversee the reasonable preservation of the Sacandaga Lake Property, and (vi) shall take such other steps as the Receiver deems prudent consistent with the Sacandaga Property MDO.

II.

IT IS FURTHER ORDERED that, except as expressly modified herein, the Preliminary Injunction Order dated July 22, 2010 (Docket No. 96), as modified by subsequent Orders of this Court, remains in full force and effect.

Dated: Albany, New York
December 21, 2013

A handwritten signature in black ink, appearing to read "Christian F. Hummel", written over a horizontal line.

HON. CHRISTIAN F. HUMMEL
United States Magistrate Judge

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