

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
Hearing on Motion for Preliminary Injunction  
Wednesday, June 9, 2010 at 10:30 AM

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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,  
*Defendants, and*  
LYNN A. SMITH,  
*Relief Defendant.*

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

CR: Bonnie Buckley  
CRD: Cindy Mezoff

Appearances:

David P. Stoelting  
Kevin P. McGrath  
Lara Mehraban

Securities and Exchange Commission

Michael Koenig

Timothy M. McGinn  
David Smith

James Featherstonhaugh

Lynn A. Smith

Jill A. Dunn

David M. Wojeski  
*as Trustee of David L.  
and Lynn A. Smith  
Irrevocable Trust U/A  
8/04/04*

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10:40 am: Appearances noted. Preliminary matters are discussed with counsel regarding 5<sup>th</sup> Amendment declaration.

11:00 am: Witness for plaintiff  
William J. Brown

Witness is shown exhibits 114 & 116

11:35 am: Cross-Examination of William Brown by James Featherstonhaugh  
(FTR index counter 11:33325)

11:50 am: Witness for plaintiff Direct- Exam  
Isreal Maya

Witness is shown exhibit p70

p-70 is shown to witness. It is a Declaration.

p-49 is shown to witness - schedule summary of the activity in the account. Key code is DS=Dave Smith, MR=Mr. Rogers, TM=Tim McGinn

12:15 pm: Cross-Examination- James Featherstonhaugh of Israel Maya.

Exhibit p-1 is shown to witness.

12:45 pm: Jill Dunn - Cross-Examination

12:46 pm: David Stoelting- Re-Direct

p-39 is shown to witness

12:53 PM: Re-Cross Featherstonhaugh

12:53 PM: Recess.

2:00 PM: Witness for plaintiff  
Roseann Daniello

Direct Exam - Kevin McGrath

Exhibit 69a is shown to witness

Exhibit 72 is shown to witness

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\_\_\_ PM Cross-examination -Featherstonhaugh

3:10 PM Cross-Examination -Dunn  
witness referred to Exhibit 1 of her Supplemental Dec. dated 6/2/2010  
Intervenor Ex. 1 - 4/12/05 Ltr from D. Smith to T. Urbelis with attachments (not  
on Dunn's proposed exhibit list) - marked and shown to witness  
Intervenor Ex. 2 - Cancelled Checks Showing Payments of Trust's Tax Liability -  
marked and shown to witness  
Exhibits offered - Court will consider

3:35PM Re-direct - Kevin McGrath  
Exs. 72, 76 shown to witness

3:40PM Witness excused  
  
Court discusses the schedule for the remainder of the day with counsel

3:41PM Recess.

3:58 PM: Witness for plaintiff  
Bernard Malmud  
  
Direct Examination- Linda Marabond

4:10 PM: Cross-Examination-Featherstonhaugh

4:25 PM: Witness for Plaintiff  
David C. McQuade  
  
Direct Examination- David Stoelting

4:50 PM: Cross-Examination-Featherstonhaugh

5:10 PM: Recess for evening. *until 9:15 am.*