



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

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DIVISION OF
ENFORCEMENT

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June 24, 2010

BY ECF

The Honorable Gary L. Sharpe
United States District Judge
United States District Court
Northern District of New York
United States Courthouse
Albany, New York 12207

Re: *SEC v. McGinn, Smith & Co., Inc., et al.*, 10 CV 457 (GLS)(DRH)

Dear Judge Sharpe:

I write on behalf of plaintiff Securities and Exchange Commission to request an extension of time to respond to a motion to dismiss filed by relief defendant Lynn A. Smith. Plaintiff's response would otherwise be due on June 28, 2010. Plaintiff respectfully requests that its response date be changed to two weeks after the issuance of Judge Homer's decision on the pending motion for a preliminary injunction. As explained below, the decision on the preliminary injunction may affect how plaintiff responds to the motion to dismiss.

This is plaintiff's first request for an extension of time to respond to the motion to dismiss. Counsel for Mrs. Smith informed me today that Mrs. Smith would not agree to an extension of time.

As background, this action commenced on April 20, 2010, with the filing of a complaint and motions for a temporary restraining order and preliminary injunction. Judge Kahn granted plaintiff's TRO motion and the preliminary injunction motion was referred to Judge Homer. The parties, joined by an Intervenor (the David and Lynn Smith Irrevocable Trust), conducted expedited discovery, including multiple depositions and document discovery. Following the submission of pre-hearing briefs, a hearing was held before Judge Homer from June 9-11, 2010, during which ten witnesses testified and more than 150 exhibits were received into evidence. Following the submission of post-hearing briefs, the matter is currently before Judge Homer.

On June 9, 2010, during the first day of the preliminary injunction hearing, Mrs. Smith filed a motion to dismiss. Her motion raises essentially the same factual and legal arguments that she has raised in her opposition to the preliminary injunction motion.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 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,

Defendants, and

LYNN A. SMITH,

Relief Defendant.

ORDER

IT IS ORDERED that plaintiff Securities and Exchange Commission shall serve and file its response to the motion to dismiss filed by relief defendant Lynn A. Smith within two weeks of the date the Court issues a decision on plaintiff's motion for a preliminary injunction.

SO ORDERED:

Dated: _____, 2010

UNITED STATES DISTRICT JUDGE