



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
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New York, NY 10281-1022

DIVISION OF
ENFORCEMENT

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January 28, 2020

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)(CFH)***

Dear Judge Sharpe:

On behalf of plaintiff Securities and Exchange Commission, I enclose for the Court's consideration and approval a proposed *Turnover Order (Fed. R. Civ. P. 69(a) and NY CPLR §§ 5225(b) and 5227) to Community Bank, N.A.* (the "Proposed Order").

If approved by the Court, the Proposed Order would require Community Bank to turn over to the Receiver, for distribution pursuant to the Court-approved plan, two accounts in the name of the David L. and Lynn A. Smith Irrevocable Trust U/A dated August 4, 2004 (the "Smith Trust"). As stated in the Court's *Final Judgment as to Defendant David L. Smith*, the assets of the Smith Trust shall "be treated as an asset of [Defendant David L.] Smith's and shall be applied to Smith's payment obligations under this Final Judgment." See Dkt. 835 at 7. Accordingly, the Commission respectfully requests that the Court approve the Proposed Order.

Respectfully submitted,

/s David Stoelting

David Stoelting

cc (by email and ECF): William J. Dreyer, Esq., counsel to Defendant David L. Smith

had a balance of \$36,126.

Community Bank shall, within 14 days of the service of this turnover Order, make such payment to the Receiver, for inclusion in the receivership estate in this action and distribution pursuant to the Court-approved Plan. Payment shall be: (a) made by United States postal money order, certified check, bank cashier's check, or bank money order; (b) made payable to "William J. Brown, Receiver"; (c) hand-delivered or mailed to William J. Brown, Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, New York 12207; and (d) submitted with a copy of this Order and a cover letter that identifies: (i) Community Bank as submitting the payment and (ii) the name and number of this proceeding (*SEC v. McGinn Smith & Co., Inc.*, 10-cv-457 (N.D.N.Y.)). Further, Respondent shall simultaneously transmit photocopies of evidence of payment, the cover letter sent to the Receiver, and this Order to David Stoelting, Senior Trial Counsel, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

II.

ORDERED that this Court shall retain jurisdiction to enforce compliance with this Order.

Dated: Albany, New York
_____, 2020

UNITED STATES DISTRICT JUDGE