

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 GRANTING RECEIVER’S OMNIBUS MOTION FOR APPROVAL OF (I)  
DESTRUCTION OF FILES, RECYCLING OF COMPUTERS AND OTHER WIND-UP  
ACTIVITIES, (II) CONTINUATION OF RECEIVERSHIP TO ACCOMPLISH  
FOREGOING, AND (III) TERMINATION OF THE RECEIVERSHIP AND  
DISCHARGE OF THE RECEIVER, ALL FOLLOWING COMPLETION OF FINAL  
DISTRIBUTIONS TO INVESTORS WITH ALLOWED CLAIMS AND THE FILING OF  
THE RECEIVER’S FINAL REPORT**

Upon the Motion requesting approval of (i) destruction of files, recycling of computers and other wind-up activities, (ii) continuation of the Receivership to accomplish the foregoing, and (iii) termination of the Receivership and discharge of the Receiver, all following the completion of final distributions to investors with allowed claims and the filing of the Receiver’s Final Report dated July 22, 2020 (“Motion”); and notice of the Motion having been given by first class mail to the Securities and Exchange Commission, the Internal Revenue Service, the New York Department of Taxation and Finance, by ECF to all parties who have filed a Notice of Appearance in this action, and via the Receiver’s website to all creditors of the

McGinn, Smith entities and other parties in interest, which notice is deemed good and sufficient notice; and the Court having considered the Motion, the Court finds that cause exists to grant the relief requested therein; it is therefore

ORDERED, that the Motion is granted, and it is further

ORDERED, that, following the completion of the Final Notice Procedure and the final distribution to investors, the Receiver shall destroy by shredding all remaining paper business records of the Receivership Entities and wipe the hard drives of all computers of the Receivership Entities and thereafter dispose or recycle those computers, except for those records necessary to support tax returns which have or will be filed; and it is further

ORDERED, that the Receivership is continued to complete the Final Notice Procedure, the final distribution process, the destruction of records and computers, the filing of final tax returns, and the resolution of any pending litigation, with the Receiver to file a Final Report, which shall notify the Court that judgment may be entered against the MS Entities, and a certificate of completion with the Court upon completion of the foregoing tasks; and it is further

ORDERED, that upon the filing of the Final Report, a certificate of completion, and entry of a judgment against the MS Entities, the Receivership over the property of the Receivership Entities is terminated; and it is further

ORDERED, that upon the filing of the certificate of completion, the Receiver and his employees, agents, attorneys and representatives are hereby released from all further liability to this Receivership estate and to the Receivership Entities, and their successors, assigns, affiliates and subsidiaries and their respective creditors, claimants, beneficiaries and owners; and it is further

ORDERED, that all persons who receive notice of this Order, or of this proceeding, are enjoined from commencing or prosecuting any action against the Receiver or his agents in connection with or arising out of the Receiver's service to this Court in this Receivership, without leave of this Court and the Court will retain jurisdiction over this action for the purpose of enforcing the above injunctive; and it is further

ORDERED, that this Order is without prejudice to the Receiver's limited authority to process additional checks or refunds that might come to his attention in the process of checks or refunds as appropriate, as well as to dispose of by appropriate means any remaining property of the Receivership Entities.

Dated: November 10, 2020  
Albany, New York

  
HON. GARY L. SHARPE