



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office
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New York, NY 10281

DIVISION OF
ENFORCEMENT

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September 27, 2011

BY ECF

The Honorable David R. Homer
United States Magistrate 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 Homer:

The Court's Memorandum-Decision and Order dated July 20, 2011 ("MDO") requires defendant-relief defendant Lynn A. Smith to make certain payments by September 1, 2011. Ms. Smith has not made the payments ordered in the MDO. As a result, we submit for Your Honor's review and approval: (1) a proposed Order Directing Payment of Money to the Receiver, and (2) a proposed Judgment for entry. Because the attorney fees are to be paid to the SEC, and the disbursement is to be paid to the Receiver, it is appropriate to submit both an Order and a Judgment.

Respectfully submitted,

/s

David Stoelting

cc (w/attachments and by e-mail): All counsel
Nancy McGinn

**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, DAVID L. SMITH,
LYNN A. 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.

JUDGMENT

On July 20, 2011, the Court issued a Memorandum-Decision and Order (“MDO”) granting the SEC’s motion for sanctions and ordering that, among other things, on or before September 1, 2011, L. Smith shall pay to the SEC a total of \$51,232 for attorney fees and costs incurred by the SEC; and L. Smith has failed to pay any of the \$51,232 in attorney fees and costs;

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that L. Smith is liable for attorney's fees and costs in the amount of \$51,232. L. Smith shall satisfy the obligation in this Judgment by paying \$51,232 by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, NE, Stop 6042, Washington DC 20549, and shall be accompanied by a letter identifying L. Smith as a defendant/relief defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Judgment. L. Smith shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

No payment shall be credited in satisfaction of this Judgment as to attorney fees and costs until L. Smith's disgorgement obligations, as set forth in the Order Directing Payment of Money to Receiver, shall be fully paid, including interest.

II.

The claims against L. Smith in the Amended Complaint as a defendant/relief defendant are not resolved by this Judgment.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment and for all other purposes.

IV.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated: September __, 2011
Albany, New York

UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

10 Civ. 457 (GLS/DRH)

McGINN, SMITH & CO., INC.,
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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.

ORDER DIRECTING PAYMENT OF MONEY TO RECEIVER

WHEREAS, on July 20, 2011, the Court issued a Memorandum-Decision and Order (“MDO”) finding that the clear and convincing evidence presented by the SEC demonstrated that Lynn A. Smith (“L. Smith”), Jill Dunn (“Dunn”) and David Wojeski (“Wojeski”) acted with subjective bad faith in failing to disclose the existence of an Annuity Agreement;

WHEREAS, the MDO granted the SEC’s motion for sanctions and ordered that on or before September 1, 2011, L. Smith shall disgorge to William J. Brown, the Court-appointed

Receiver (the "Receiver"), \$944,848, jointly and severally with the obligations of Dunn and Wojeski to disgorge, respectively, \$5,355 and \$13,834;

WHEREAS, Dunn and Wojeski have satisfied their disgorgement obligations under the MDO, reducing the disgorgement amount owed by L. Smith to \$925,659;

WHEREAS, L. Smith has failed to pay any of the \$925,659 in disgorgement;

NOW, THEREFORE,

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that L. Smith is liable for disgorgement of \$925,659, with interest pursuant to 28 U.S.C. § 1961 from September 1, 2011. L. Smith shall satisfy this obligation by paying \$925,659 to the Receiver, William Brown, together with a cover letter identifying L. Smith as a defendant/relief defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Order. L. Smith shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. L. Smith shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961 from September 1, 2011.

The Receiver shall deposit the funds into an interest bearing account. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. The Commission or the Receiver may enforce the Court's judgment for disgorgement and interest by moving for civil contempt (and/or through other collection procedures authorized by law). In response to any such civil contempt motion by the Commission or the Receiver, L. Smith may assert any legally permissible defense.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Order and for all other purposes.

Dated: September __, 2011
Albany, New York

UNITED STATES MAGISTRATE JUDGE