

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION :

*Plaintiff,*

vs.

Case No. 1:10-CV-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, 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.*

-----X

**NOTICE TO POTENTIAL PURCHASERS FOR THE SMITH SACANDAGA  
LAKE PROPERTY REGARDING FURTHER OFFERS AND BIDDING PROCEDURES**

PLEASE TAKE NOTICE that pursuant to the Court's Memorandum-Decision and Order dated November 22, 2013 (Docket No. 647) and the Order in Aid of Administration of Memorandum-Decision and Order (Docket No. 647) dated December 23, 2013 (Docket No. 657), the following shall apply respecting further offers for the purchase of the Smith Sacandaga Lake Property:

1. The Receiver shall conspicuously post on the Receiver's website relating to this case (<http://mcginnsmithreceiver.com>) general details of the proposed sale along with the deadline for submissions of competing offers for the property.

2. The Receiver's real estate broker, CMK & Associates Real Estate, 3727 State Rte 30, Amsterdam, NY 12010 (518.883.8904), Attn: Christian Klueg or Bryn Brown, will, by February 19, 2014, list the property for sale on the multiple listing service system and actively solicit further offers for the property.

3. Any competing offers for the property must be in writing and on substantially the same terms as set forth in the stalking horse Contract tendered to the Receiver on February 13, 2014 ("Stalking Horse bidder") and be received by the Receiver by March 7, 2014 at 4:00 p.m. Eastern Time including the required 10.1% deposit by wire transfer or certified check.

4. Any party willing to make a competing offer must present a timely offer for no less than \$578,000 by March 7, 2014 at 4:00 p.m. Eastern Time. Subsequent bidding increments will be in increments of no less than \$1,000.

5. To the extent that the Receiver receives one or more bona-fide offers to purchase the property at a higher net value to the Receiver's estate than the Stalking Horse Contract in accordance with these procedures, an auction will be held at the offices of Phillips Lytle LLP, Omni Plaza, 30 South Pearl Street, Albany, New York 12207, on March 12, 2014 at 11:00 a.m. Eastern Time.

6. If the Stalking Horse bidder is not the highest and best bidder at the auction, the Stalking Horse bidder will receive a break-up fee of \$2,731.25 upon the closing of the winning contract. The Stalking Horse bidder shall remain as a back-up bidder if the winning bidder does not close. Any alternative offer must result in a net higher economic value to the Receiver's estate as seller based upon the consideration paid by the buyer and all factors as determined by the Receiver.

7. The Receiver, in his reasonable discretion, may take such other actions as necessary to insure that the marketing, auction and sales procedures are in accordance with his duty to maximize the value of the property for the benefit of the MS Estates and those entitled to the proceeds.

8. If the Stalking Horse bidder is the successful bidder, the Receiver's real estate broker shall be entitled to a one percent commission equaling \$5,462.50 upon a successful closing, one-half of which will be paid for by the Stalking Horse bidder. If the competing offer is the successful bidder, upon a successful closing, the Receiver's real estate broker will be entitled to a commission of five percent of the purchase price calculated in accordance with the Listing Agreement.

Questions concerning the process or any other matters should be directed to:

William J. Brown, Esq.  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, New York 14203  
Tel: (716) 847-7089  
E-mail: [wbrown@phillipslytle.com](mailto:wbrown@phillipslytle.com)

Dated: February 18, 2014

PHILLIPS LYTLE LLP

By /s/ William J. Brown  
William J. Brown (Bar Roll #601330)  
Attorneys for Receiver  
Omni Plaza  
30 South Pearl Street  
Albany, New York 12207  
Telephone No.: (518) 472-1224  
Facsimile No.: (518) 472-1227

and

One Canalside  
125 Main Street  
Buffalo, New York 14203  
Telephone No.: (716) 847-8400  
Facsimile No.: (716) 852-6100  
E-mail: [wbrown@phillipslytle.com](mailto:wbrown@phillipslytle.com)