

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

US COMMODITY FUTURES TRADING
COMMISSION,

Case No. 03-61199-Civ-Marra

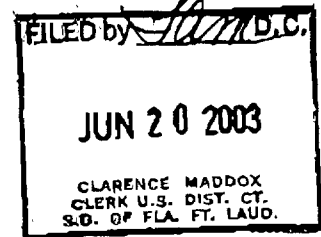
Plaintiff,

Magistrate Judge Seltzer

v.

GIOVANNI FLEURY and GIOVANNI
FLEURY INVESTMENTS, INC.,

Defendants.



**Statutory Restraining Order Freezing Assets, Appointing A Temporary Receiver,
and Ordering Defendants to Show Cause Why a Preliminary
Injunction Should Not Be Granted**

Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a complaint for permanent injunction and other relief, and moved, pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2001), for a statutory restraining order freezing assets, appointing a temporary receiver, and ordering defendants to show cause why a permanent receiver should not be appointed and why a preliminary injunction should not be issued. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion and now being fully advised in the premises finds that:

- (1) this Court has jurisdiction over the subject matter of this case, and Section 6c of the Act, 7 U.S.C. §13a-1 (2001), authorizes relief;
- (2) there is good cause to believe that defendants Giovanni Fleury Investments, Inc. ("GFI") and Giovanni Fleury ("Fleury") have engaged in, are engaging in and

are about to engage in violations of 7 U.S.C. §§ 6, 6b (2001) and 17 C.F.R.

§1.1(2002);

(3) absent the entry of this statutory restraining order, the defendants are likely to dissipate or transfer assets and refuse access to or destroy business records; and,

(4) this is a proper case for granting a statutory restraining order to preserve the status quo, protect public customers from loss and damage, and enable the

Commission to fulfill its statutory duties, therefore the Court

orders as follows:

DEFINITIONS

For the purposes of this Order, the following definitions apply:

1. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, contracts, insurance policies, and all cash, wherever located, whether in the United States or abroad.

2. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

3. "Defendants" means Giovanni Fleury Investments, Inc. ("GFI") and Giovanni Fleury ("Fleury") and any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with the Defendants.

RELIEF GRANTED***Asset Freeze*****I.**

IT IS HEREBY ORDERED that the defendants, except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly:

- A. Transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, wherever located, including assets held outside the United States, except as provided in Paragraphs III and VI of this Order, or as otherwise ordered by the Court;
- B. Opening or causing to be opened any safe deposit boxes titled in the name or subject to access by any of the defendants;
- C. Notwithstanding the provisions of this paragraph, defendants shall transfer possession of all assets of GFI pursuant to paragraph VI of this Order.

II.

IT IS FURTHER ORDERED, pending further Order of this Court, that any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset titled in the name of, held for the benefit of, or otherwise under the control of any defendant, or has held, controlled, or maintained custody of any such account or asset of any defendant at any time since December 21, 2000 shall:

- A. Prohibit defendants and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court or, as to GFI's assets, as directed by the Receiver appointed herein;

B. Deny defendants and all other persons access to any safe deposit box that is:

1. titled in the name of any defendant, individually or jointly; or
2. otherwise subject to access by any defendant.

Notwithstanding this Paragraph, the Receiver appointed herein shall be provided with access to any safe deposit box titled in the name of, or subject to access by, the defendants;

C. Provide the Receiver and counsel for the Commission, within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each such account or asset titled in the name, individually or jointly, of any of the defendants, or held on behalf of, or for the benefit of, any of the defendants, or under the control of any of the defendants;
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any defendant, or is otherwise subject to access by any defendant;

D. Upon request by the Receiver or the Commission, promptly provide the Receiver and the Commission with copies of all records or other

documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

- E. Cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at the Receiver's direction and producing records related to defendants' accounts.

III.

IT IS FURTHER ORDERED that within twenty (20) calendar days following the service of this Order, each defendant shall:

- A. Provide the Commission and the Receiver with a full accounting of all funds, documents, and assets outside of the United States which are (1) titled in the name individually or jointly of such defendant; or (2) held by any person or entity, for the benefit of any defendant; or (3) under such defendant's direct or indirect control, whether jointly or singly;
- B. Transfer to the territory of the United States and deliver to the Receiver all funds, documents, and assets located in foreign countries which are (1) titled in the name individually or jointly of such defendant or; or (2) held by any person or entity, for the benefit of any defendant; or (3) under such defendant's direct or indirect control, whether jointly or singly;
- C. Provide the Commission access to all records of accounts or assets of the defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

Temporary Receiver

IV.

IT IS FURTHER ORDERED that Russel C. Weigel III, Montello & Kenney, P.A., 777 Brickell Avenue Suite 1070, Miami, Florida (telephone (305) 373-0300/facsimile (305) 373-3739) is appointed temporary Receiver for **Giovanni Fleury Investments, Inc.** and any affiliates or subsidiaries of **Giovanni Fleury Investments, Inc.** (hereinafter referred to as the "receivership defendant"), with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order.

V.

IT IS FURTHER ORDERED that the Receiver is directed and authorized to accomplish the following:

- A. Assume full control of the receivership defendant by removing defendant Fleury, and any officer, independent contractor, employee, or agent of the receivership defendants, from control and management of the affairs of the receivership defendant;
- B. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the receivership defendant, wherever situated. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the receivership defendant, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the receivership defendant;

- C. Take all steps necessary to secure the business premises of the receivership defendant, including but not limited to premises located at 1580 Sawgrass Corporate Parkway, Suite 130, Sunrise, Florida, 33323, and 17673 SW 32nd St., Miramar, Florida 33029; and any and all other business premises under the control of the defendants. However, to the extent the SW 32nd Street location is the residence of Defendant Fleury, the Receiver shall not deny access to the residence by Defendant Fleury, and shall access the residence between the hours of 9:00 am and 5:00pm, unless Defendant Fleury agrees otherwise. The Receiver shall not remove from the S.W. 32nd Street property any item of personal property which appears to be used for residential living purposes. If the Receiver believes any such items were obtained from funds of the Phoenix business and should be disgorged, the Receiver shall only inventory those items at the present time;
- D. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, including but not limited to liquidation of open foreign currency positions, in order to prevent any loss, damage or injury to customers or clients;
- E. Prevent the withdrawal or misapplication of funds entrusted to the receivership defendant, and otherwise protect the interests of customers or clients;
- F. Manage and administer the receivership defendant by performing all acts incidental thereto that the receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;
- G. Collect all money owed to the receivership defendant;
- H. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court

necessary to preserve or increase the assets of the receivership defendant or to carry out his or her duties pursuant to this Order;

- I. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- J. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
- K. Open one or more bank accounts as designated depositories for funds of the receivership defendant. The Receiver shall deposit all funds of the receivership defendant in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and
- L. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the receivership defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the receivership defendant.

VI.

IT IS FURTHER ORDERED that, immediately upon service of this Order upon them, defendants and any other person or entity served with a copy of this Order, shall immediately or within such time as permitted by the Receiver in writing, deliver over to the Receiver:

- A. Possession and custody of all funds, assets, property, and all other assets, owned beneficially or otherwise, wherever situated, of the receivership defendant;
- B. Possession and custody of documents of the receivership defendant, including but not limited to, all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
- C. Possession and custody of all precious metals, other commodities, funds, and other assets being held by or on behalf of the receivership defendant or on behalf of the receivership defendant's customers;
- D. All keys, computer passwords, entry codes, and combinations to locks necessary to gain or to secure access to any of the assets or documents of the receivership defendant, including but not limited to, access to the receivership defendant's business premises, means of communication, accounts, computer systems, or other property, however, delivery of such keys, passwords, entry codes and combinations shall not apply to Defendant Fleury's residence; and
- E. Information identifying the accounts, employees, properties or other assets or obligations of the receivership defendant.

VII.

IT IS FURTHER ORDERED that defendants and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons

who owe money to the receivership defendant that all debts should be paid directly to the Receiver.

VIII.

IT IS FURTHER ORDERED that except by leave of the Court, during the pendency of the receivership ordered herein, the defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the receivership defendant, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- A. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;
- B. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the receivership defendant or any property claimed by the receivership defendant, or attempting to foreclose, forfeit, alter or terminate any of the receivership defendant's interests in property, whether such acts are part of a judicial proceeding or otherwise;
- C. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the receivership defendants, or the Receiver, or any agent of the Receiver; and

- D. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the receivership defendant.

This Paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

IX.

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the receivership defendant. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

X.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 754 (1994), the Receiver shall file with the Clerk of the Court a bond in the amount of \$25,000 with sureties to be approved by the Court, conditioned that the Receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

Maintenance of and Access to Business Records

XI.

IT IS HEREBY ORDERED that the defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of any defendant.

XII.

IT IS FURTHER ORDERED that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the defendants and their agents including, but not limited to, paper documents, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the possession of the defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated.

Service of Order and Assistance of United States Marshals Service

XIII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets of any defendant, or that may be subject to any provision of this Order.

XIV.

IT IS FURTHER ORDERED that the United States Marshals Service is directed to: (a) assist the Commission in the service of the summons, complaint, and this statutory restraining order on the defendants; and (b) assist the Receiver in taking control and custody of the assets, records and business premises of the receivership defendant.

Expedited Discovery

XV.

IT IS FURTHER ORDERED that the parties and the Receiver are granted leave, at any time after service of this Order, to take the deposition of and demand the production of documents from any person or entity for the purpose of discovering the nature, location, status, and extent of assets of the defendants, and the location of documents reflecting the business transactions of the defendants; seven (7) business days notice shall be deemed sufficient for any such deposition and twelve (12) business days notice shall be deemed sufficient for the production of any such documents.

XVI.

IT IS FURTHER ORDERED that the limitations and conditions set forth in Federal Rule of Civil Procedure 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this Order. No depositions taken pursuant to paragraph XV shall count towards the ten deposition limit set forth in Federal Rule of Civil Procedure 30(a)(2)(A).

XVII.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 30(a)(2), the parties and the Receiver are granted leave to take the depositions of defendants confined in prison.

Service on the Commission

XVIII.

IT IS FURTHER ORDERED that the defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering BY FACSIMILE (202) 418-5331, OVERNIGHT CARRIER OR OTHER NON

U.S. POSTAL SERVICE MEANS a copy to Ghassan Hitti, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

Order to Show Cause

XIX.

IT IS FURTHER ORDERED that each of the defendants shall appear before this Court on the 30th day of June, 2003, at 4:00 p.m., before the Honorable Kenneth A. Marra, Courtroom 205C, at the United States Courthouse for the Southern District of Florida located at 299 E. Broward Boulevard in Fort Lauderdale, Florida, to show cause why this Court should not enter a preliminary injunction enjoining the defendants from further violations of the Act, continuing the freeze on the assets of the defendants, making the receiver's appointment permanent, and ordering any additional relief this Court deems appropriate. Should any party wish to file a memorandum of law or other papers concerning the issuance of a preliminary injunction against the defendants, such materials shall be filed, served and received by all parties at least two (2) business days before the hearing ordered above. Any documentary evidence that any party intends to offer at the hearing shall also be served upon the other party two (2) business days before the hearing ordered above.

XX.

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, at Ft. Lauderdale, Broward County, Florida on this 20th day of June, 2003, at 3:22 p.m.


KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

CONSENT TO RELEASE OF FINANCIAL RECORDS

I, _____, do hereby direct any bank or trust company at which I have a bank account of any kind upon which I am authorized to draw, and its officers, employees and agents, to disclose all information and deliver copies of all documents of every nature in your possession or control which relate to said bank accounts to any attorney of the Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of Commodity Futures Trading Commission v. Giovanni Fleury Investments, Inc. and Giovanni Fleury, now pending before the United States District Court for the Southern District of Florida, and this shall be irrevocable authority for so doing. This direction is intended to apply to the laws of countries other than the United States which restrict or prohibit the disclosure of bank information without the consent of the holder of the account, and shall be construed as consent with respect thereto, and the same shall apply to any of the bank accounts for which I may be a relevant principal.

Dated: _____, 2003

Signature