

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC DOCKET NO. 01-04
	:	
ISAAC FLEYSHMAKHER	:	COMPLAINT AND NOTICE
1530 North Dearborn Street	:	OF HEARING PURSUANT TO
Chicago, Illinois 60610,	:	SECTIONS 6(c) AND 6(d) OF THE
	:	COMMODITY EXCHANGE ACT,
	:	AS AMENDED
Respondent.	:	

I.

The Commodity Futures Trading Commission (“Commission”) has received information from its staff which tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

SUMMARY

1. Isaac Fleyshmakher (“Fleyshmakher”) committed fraud in connection with the operation of two separate investment pools. From July 1998 through February 2000 (the “relevant period”), Fleyshmakher solicited investors for and managed two Illinois limited partnerships, New Frontier L. P. (“New Frontier”) and New Millennium L. P. (“New Millennium”). Fleyshmakher defrauded New Frontier investors by transferring their funds which had been solicited to trade securities, into a commodity trading account, without their knowledge and consent. By trading commodity futures with New Frontier funds, Fleyshmakher engaged in unauthorized trading; and by transferring, trading and failing to return those funds to New Frontier investors, he misappropriated the funds. Fleyshmakher made false statements

about the performance record of the New Millennium pool when soliciting investors. He also misappropriated New Millennium funds by retaining service fees to which he was not entitled because he performed no legitimate trading services for investors. Finally, while Fleishmakher acted as a commodity pool operator (“CPO”) of the New Frontier and New Millennium commodity pools during the relevant period, he was never registered with the Commission in that capacity.

RESPONDENT

2. Isaac Fleishmakher is 32 years old and resides at 1530 North Dearborn Street, Chicago, Illinois 60610. He has never been registered with the Commission in any capacity.

FACTS

The New Frontier Pool

3. Fleishmakher formed New Frontier in July 1998. According to New Frontier’s Limited Partnership Agreement (“L. P. Agreement”), dated July 1, 1998, the stated purpose of the partnership was securities trading and investment.

4. As sole general partner of New Frontier, Fleishmakher conducted New Frontier’s business, which included soliciting, receiving and pooling funds from investors, making investment decisions and managing New Frontier’s bank and securities accounts.

5. From July 1998 through at least December 1999, Fleishmakher solicited and accepted at least \$330,000 from at least twelve investors for participation units in New Frontier.

6. On October 27, 1999, without the consent of the New Frontier investors, Fleishmakher amended New Frontier’s L. P. Agreement to allow the partnership to “enter into a Customer Agreement with any duly registered futures commission merchant, chosen by the Partners, for the purpose of purchasing and selling commodity futures contracts and options on

commodity futures contracts, and related commodity business.” Such an amendment was not authorized under the terms of the New Frontier’s L. P. Agreement without the consent of the limited partners. Nor was the amendment ever provided to the New Frontier investors.

7. Also on or about October 27, 1999, Fleyshmakher opened a commodity futures trading account in New Frontier’s name at a registered futures commission merchant (“FCM”).

8. Fleyshmakher placed a total of \$10,000 of New Frontier funds in the account at the FCM on October 28, 1999. He lost approximately \$4,000 trading commodity futures and re-deposited the remaining \$6,000 into New Frontier’s bank account on December 20, 1999.

9. Fleyshmakher subsequently transferred funds from New Frontier’s bank account to third parties, who were unrelated to the pooled fund.

The New Millennium Pool

10. Fleyshmakher formed New Millennium on or about October 1999. According to New Millennium’s Limited Partnership Agreement, the stated purpose of New Millennium was securities and commodities trading and investment.

11. As sole general partner of New Millennium from its inception, Fleyshmakher conducted New Millennium’s business, which included soliciting, receiving and pooling funds from investors, making investment decisions and managing New Millennium’s bank and commodities accounts.

12. From October 1999 through February 2000, Fleyshmakher sent prospective New Millennium investors a performance report which claimed that an initial investment of \$30,000 in New Millennium on December 12, 1996 would have increased to \$180,345 by August 19, 1999. This performance report was false because New Millennium had never traded either securities or commodity futures and, consequently, had no past performance record.

13. In addition, Fleishmakher told prospective investors that New Millennium had made large profits during the two to three years that the pooled fund had traded commodity futures and securities. At no time during his solicitation of New Millennium investors, did Fleishmakher tell prospective investors that the New Millennium pool had never traded either commodities or securities and, therefore, had no past performance record.

14. From late October 1999 through February 2000, Fleishmakher solicited and accepted at least \$102,500 from eight investors for participation units in New Millennium.

15. On December 23, 1999, Fleishmakher opened a commodity trading account in New Millennium's name at an FCM, with an initial deposit of \$34,000. On December 30, 1999, Fleishmakher deposited an additional \$39,000 into the New Millennium commodity trading account.

16. On February 1, 2000, Fleishmaker closed the New Millennium commodity trading account at the FCM, without entering into any commodity futures trades, and re-deposited the approximately \$73,000 into New Millennium's bank account.

17. On February 4, 2000, Fleishmakher opened a new commodity trading account at another registered FCM, with an initial deposit of \$93,000. On February 16, 2000, Fleishmakher closed that account, once again without entering into any commodity trades, and re-deposited \$93,000 into New Millennium's bank account.

18. Thereafter, Fleishmakher repaid the eight investors a total of \$100,270, retaining approximately \$2,200 of their collective funds as "service fees." Fleishmakher was not entitled to these service fees because he performed no legitimate trading services for New Millennium investors.

COUNT ONE

VIOLATIONS OF SECTION 4b(a)(i) and 4b(a)(iii) OF THE ACT: FRAUD BY UNAUTHORIZED TRADING, MISAPPROPRIATION AND MISREPRESENTATION

19. The allegations contained in Paragraphs 1 through 18 are realleged and incorporated herein.

20. Sections 4b(a)(i) and (iii) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(i) and (iii) (1994), make it unlawful, in or in connection with futures transactions, to cheat or defraud or attempt to cheat or defraud another person, or to willfully deceive or attempt to deceive any person by any means whatsoever.

21. As set forth more specifically in Paragraphs 3 through 18, Fleyshmakher violated Sections 4b(a)(i) and (iii) of the Act by: (1) trading commodity futures with \$10,000 of New Frontier funds, without the consent of the New Frontier investors, thereby engaging in unauthorized trading; (2) transferring, trading and failing to return to New Frontier investors \$10,000 of New Frontier funds, thereby misappropriating those funds; (3) misrepresenting the performance record of the New Millennium pool when soliciting investors by stating that New Millennium had a performance record when, in fact, the pool had never traded commodities or securities; and (4) misappropriating New Millennium investor funds by retaining \$2,200 in service fees to which he was not entitled. Each act of unauthorized trading, misrepresentation and misappropriation constitutes a separate violation of Section 4b(a) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY A COMMODITY POOL OPERATOR

22. The allegations contained in Paragraphs 1 through 18 are realleged and incorporated herein.

23. Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (1994), defines a CPO as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

24. Fleyshmakher acted as a CPO of the New Frontier commodity pool.

25. Fleyshmakher was a CPO of the New Millennium commodity pool throughout the period October 1999 through February 2000 in that he solicited, accepted and received funds from New Millennium investors for the purpose of trading commodity futures.

26. Section 4q(1)(A) of the Act, 7 U.S.C. § 6q(1)(A) (1994), makes it unlawful for a CPO to employ any device, scheme or artifice to defraud any participant or prospective participant by use of the mails or any means or instrumentality of interstate commerce. Section 4q(1)(B) of the Act, 7 U.S.C. § 6q(1)(B) (1994), prohibits a CPO from directly or indirectly engaging in any practice or course of business which operates as a fraud or deceit upon any client or participant by the use of the mails or any means or instrumentality of interstate commerce.

27. During the relevant period, Fleyshmakher violated Section 4q(1)(A) and (B) of the Act, 7 U.S.C. § 6q(1) (A) and (B) in that, as a CPO, he directly or indirectly employed a device, scheme, or artifice to defraud investors or potential investors, or engaged in transactions, practices or a course of business which operated as a fraud or deceit upon investors or potential investors by: (1) trading commodity futures with \$10,000 of New Frontier funds, without the consent of the New Frontier investors, thereby engaging in unauthorized trading; (2) transferring,

trading and failing to return to New Frontier investors \$10,000 of New Frontier funds, thereby misappropriating those funds; (3) misrepresenting the performance record of the New Millennium pool when soliciting investors by stating that New Millennium had a performance record when, in fact, the pool had never traded commodities or securities; and (4) misappropriating New Millennium investor funds by retaining \$2,200 in service fees to which he was not entitled. These acts were effected by use of the mails or instrumentalities of interstate commerce. Each act of unauthorized trading, misrepresentation and misappropriation constitutes a separate violation of Section 4o(1) of the Act.

COUNT THREE

VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR

28. The allegations contained in Paragraphs 1 through 18 and 23 through 25 are realleged and incorporated herein.

29. With certain exemptions not applicable here, all CPOs are required to be registered with the Commission, pursuant to Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

30. During the relevant period, Fleyshmakher was required to be registered as a CPO under the Act. Fleyshmakher violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), in that he acted as a CPO without being registered under the Act and made use of the mails or means or instrumentalities of interstate commerce in connection with his business as a CPO.

II.

By reason of the foregoing allegations by the Division, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute administrative proceedings to determine whether the allegations set forth in Section I are true

and, if so, whether orders should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (1994).

Section 6(c) of the Act allows the Commission to (1) prohibit a respondent from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent, (3) assess against a respondent a civil monetary penalty of not more than the higher of \$110,000 or triple the monetary gain to the respondent for each violation, and (4) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

III.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing argument on the allegations set forth in Section I above be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2000), at a time and place to be fixed as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61 and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107 (2000).

IT IS FURTHER ORDERED that the Respondent shall file an Answer to the allegations against him in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of

the Rules, 17 C.F.R. § 10.23, and shall serve two copies of such Answer and of any document filed in this proceeding upon Scott R. Williamson, Regional Counsel, or Diane M. Romaniuk, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600-North, Chicago, Illinois 60606. If the Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, he shall be deemed in default, and the proceeding may be determined against him upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on Respondent personally or by registered or certified mail forthwith pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22 (2000).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Date: November 29, 2000