

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

Commodity Futures Trading Commission,
Plaintiff,

vs.

Charles G. Mady,
Defendant,

and

Mady Funding Company LLC,
Mady Futures, Inc.,
Relief Defendants.

Civil Action No.: 02-73294

Judge Arthur J. Tarnow
Magistrate Judge Pepe

**Agreed Order Appointing
Receiver**

WHEREAS, on June 11, 2002, Plaintiff, Commodity Futures Trading Commission (“Commission”), filed a complaint against Defendant Charles G. Mady (“Mady”) and Relief Defendants Mady Funding Company, LLC and Mady Futures, Inc., (“collectively Defendants”), seeking injunctive and other equitable relief and civil monetary penalties for Defendant’s violations of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq* (2001), and Commission Regulations, 17 C.F.R. §§ 1 *et seq* (2001). The Commission alleges that Defendant misappropriated investor funds, issued false reports and statements, operated as a commodity pool operator (“CPO”) without benefit of registration, committed fraud while acting as a CPO, and commingled pool funds with his own funds. The Commission further alleges that the Relief Defendants may have received funds or otherwise benefited from funds that are directly traceable to the Defendant’s alleged fraudulent schemes and that the Relief Defendants have no legitimate interest in those funds.

WHEREAS, simultaneously with the filing of the Complaint, the Commission and Mady, on his own behalf and as agent for the Relief Defendants agreed to the entry of a Consent

Order of Preliminary Injunction and Other Ancillary Relief (“Consent Order”) by this Court. The Consent Order, among other things, directs Mady to halt the fraudulent practices, freezes the Defendants’ assets and directs the Defendants to provide the Court with an accurate accounting. This Order is issued upon agreement of the parties.

I.
Appointment of Receiver

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Rodger Young of Young and Susser, P.C., is appointed as temporary equity Receiver (“Receiver”), with the full powers of an equity receiver, for the Defendants and their affiliates and subsidiaries, and for all funds, properties, premises, accounts and other assets of, in the possession of, under the control of, or held in the name of the Defendants, individually or collectively, including, but not limited to, funds belonging to investors and commodity pool participants as described in the complaint, for the purpose of marshalling, preserving, accounting for and liquidating the assets that are subject to this Order and directing, monitoring and supervising Defendants’ activities in accordance with the provisions of this Order set forth below.

IT IS FURTHER ORDERED that the Receiver shall be the agent of this Court in acting as Receiver under this Order.

II.
Powers of Receiver

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

- A. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, under the control of, or held in the name of the Defendants, individually or collectively, 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 digital

data and other papers and documents of the Defendants, including documents related to customers or clients whose interests are now held by or under the direction, possession, custody or control of the Defendants;

- B. Take all steps necessary to secure the business premises of the Defendants, including but not limited to premises located at 17672 Laurel Park Drive N, Suite 400 E., Livonia, Michigan, and any and all other business premises under the control of the Defendants;
- C. Take all steps necessary to secure the residence(s) of the Defendant including, but not limited to, the residence located at 18028 Peninsula Way, Northville, Michigan 48167-8495. The Receiver shall pay reasonable monthly living expenses to Charles G. Mady after, and based upon, Mady's submission of written and sworn verification of those living expenses. The living expenses shall include funds necessary for Mady to preserve the personal residence as an asset by, including but not limited to, making prompt mortgage payments and performing reasonable maintenance of the property;
- D. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to investors and commodity pool participants as described in the complaint;
- E. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and otherwise protect the interests of customers or clients;
- F. Collect all money owed to the Defendants;
- G. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign jurisdictions necessary to preserve or increase the assets of the Defendants or to carry out his duties pursuant to this Order, except that no powers or authority granted in this Order shall inhibit or adversely affect the Defendants' ability to represent themselves in this action or in any other legal action arising out of the facts alleged in the complaint;
- H. 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, except that the Receiver's power to choose, engage, employ and compensate these individuals is to be exercised pursuant to stipulation by the parties, or in the absence of such stipulation, upon further order of the Court;
- I. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

- J. Open one or more bank accounts as designated depositories for funds of the Defendants. The Receiver shall deposit all funds of the Defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts, except that the power to make payments and disbursements does not include the power to compensate investors or commodity pool participants as described in the complaint. Such payments and disbursements are to be made pursuant to stipulation by the parties, or in the absence of such stipulation, upon further order of the Court;
- K. 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 Defendants prior to the date of entry of the Consent Order, except for payments that the Receiver deems necessary or advisable to secure or preserve assets of the Defendants;
- L. Liquidate all assets of the Defendants and hold such assets pending further order of the Court. The parties currently stipulate that the amount owed to investors and commodity pool participants as described in the complaint is between \$11 and \$12 million. The Receiver shall not liquidate and hold assets exceeding \$12 million unless and until either he or the Commission has made a satisfactory showing that the amount owed to investors and commodity pool participants exceeds that amount. The personal residence located at 18028 Penninsula Way, Northville, Michigan, shall be the last asset to be liquidated; and
- M. Vacate the business premises occupied by the Defendants and consolidate all records and other assets by moving assets and records, if any, currently located outside of this District to a secure facility maintained within this District, except that the Receiver is ordered to provide Defendants with prompt and reasonable access to business records that pertain to Charles Mady's practice of law and his real estate business.

III.

Delivery to Receiver

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, property, and all other assets of, in the possession of, under the control of, or held in the name of the Defendants, wherever situated, except that horses in the possession of persons other than the Receiver may be turned over to the Receiver or maintained on behalf of the

Receiver by those persons at the Receiver's discretion and in the best interest of the receivership estate;

- B. Possession and custody of documents of the Defendants, 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, except that the Receiver is to provide Defendants with prompt and reasonable access to business records that pertain to Charles Mady's practice of law and his real estate business;
- C. Possession and custody of all funds and other assets belonging to investors or commodity pool participants as described in the complaint;
- D. All keys, computer passwords, entry codes, PIN numbers and combinations to locks necessary to gain or to secure access to any of the assets or documents of the Defendants, including but not limited to, access to the Defendants's business premises, means of communication, accounts, computer systems, or other property; and
- E. Information identifying the accounts, employees, properties or other assets or obligations of the Defendants.

IV.

Cooperation with Receiver

IT IS FURTHER ORDERED that the Defendants and all other persons or entities served with a copy of this Order shall cooperate fully with and assist the Receiver in the performance of his duties. 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 and discharging the responsibilities of the Receiver under this order; providing any password required to access any computer or electronic files in any medium; and advising all persons who owe money to the Defendants that all debts should be paid directly to the Receiver.

V.

Stay

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, or in the name of the Defendants, 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, and with the exception that no powers or authority granted in this Order shall inhibit or adversely affect the Defendants' ability to represent themselves in this action or in any other legal action arising out of the facts alleged in the complaint;
- 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 Defendants or any property claimed by the Defendants, or attempting to foreclose, forfeit, alter or terminate any of the Defendants' 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 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 Defendants. 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.

VI.

Receiver's Report to the Court and Compensation

IT IS FURTHER ORDERED that the Receiver maintain written accounts, itemizing receipts and expenditures, describing properties held or managed, and naming the depositories of receivership funds; make such written accounts and supporting documentation available to the Commission for inspection, and, within sixty (60) days of being appointed and monthly thereafter, file with the Court and serve on the parties a report summarizing efforts to marshal

and collect assets, administer the receivership estate, and otherwise perform the duties mandated by this Order.

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 and reasonable out-of-pocket expenses incurred by them for those services authorized by this Order that when rendered were (1) reasonably likely to benefit the receivership estate or (2) necessary to the administration of the estate. The receiver and all personnel hired by the receiver shall be compensated solely out of funds now held by or in the possession or control of or which may in the future be received by the receivership defendants and shall not be entitled to any compensation from the Commission. 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 and subsequent requests filed monthly thereafter. The requests for compensation shall itemize the time to the tenth of an hour and nature of services rendered by the receiver and all personnel hired by the receiver. The Receiver and all personnel hired by the receiver shall not increase the hourly rates used as the basis for such fee applications without prior approval of the Court.

VII.
Bond

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 754, the Receiver shall maintain the bond in the amount of \$_____ at the receivership estate's expense.

VIII.
Service of Order and Assistance of United States Marshals Service

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

IT IS FURTHER ORDERED that the United States Marshals Service is directed to assist the Receiver in taking control and custody of the assets, records and business premises of the receivership Defendants.

IX.
No Admission of Liability

IT IS FURTHER ORDERED that no provision of this Order, or the Defendants' agreement to the entry of the Order, shall be construed as an admission of the Defendants' liability or as a waiver of any defense that may be available to them, and that the Defendants' agreement to the entry of this Order shall not be used as evidence against them in this proceeding or in any other proceeding arising out the facts alleged in the complaint.

X.
Service on the Commission

IT IS FURTHER ORDERED that the Defendants and Receiver shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering the same to Clifford Histed, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

XI.
Service on the Defendants

IT IS FURTHER ORDERED that the Plaintiffs and Receiver shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Defendants by

delivering the same to Scott E. Early, Foley & Lardner, One IBM Plaza, 330 North Wabash Avenue, Suite 3300, Chicago, Illinois 60611.

XII.
Effective Date of This Order

IT IS FURTHER ORDERED that this Order shall become effective at 9:00 a.m. Eastern Standard Time, on Friday, August 2, 2002. In the event that Charles G. Mady, or any person acting on his behalf, transfers funds exceeding eleven million U.S. dollars to a designated custodial account by 5:00 p.m. Eastern Standard Time on Thursday, August 1, 2002, this Order shall not become effective. The asset freeze contained within the Consent Order entered by this Court on June 11, 2002, shall remain in full force and effect.

XIII.
Court Maintains Jurisdiction

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 August 1, 2002

We agree to the entry of this Order.

For the Plaintiff:

Clifford Histed, Trial Attorney
Commodity Futures Trading Commission
525 W. Monroe Street, Suite 1100
Chicago, Illinois 60661
(312) 596-0532
(312) 596-0714 (facsimile)

UNITED STATES DISTRICT JUDGE

For the Defendant and Relief Defendants:

Charles Mady, Defendant
Charles Mady for Mady Futures, Inc.
Charles Mady for Mady Funding Co., LLC

Scott E. Early, Esq.
Foley & Lardner
330 North Wabash Avenue, Suite 3300
Chicago, Illinois 60611
(312) 755-2505
(312) 755-1925 (facsimile)