

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**PATSY J. ALDREDGE, ROBERT L. BENTON,  
JR., HOWARD M. COURTNEY, JERRY F.  
HANCOCK, II, HERMAN D. SMALL, DAN W.  
STONE, and CHARLES M. WORTHEY,**

**Defendants.**

**Civil Action File No.  
6:05-CD-8**

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The plaintiff Securities and Exchange Commission (the "Commission") files this complaint and alleges the following:

**SUMMARY**

1. This action involves insider trading in the securities of Flowers Foods, Inc., by several of its employees. Flowers Foods is a publicly-traded baking company located in Thomasville, Georgia,

2. On January 30, 2003, prior to the opening of trading in the securities of Flowers Foods, Flowers Foods announced that its expected fiscal fourth quarter 2002 earnings per share would be higher than its previous estimate for the quarter.

3. In a separate but simultaneous press release, Flowers Foods disclosed the sale of its Mrs. Smith's Bakeries's frozen dessert business to Schwan Food Company for \$240 million.

4. After the announcements, Flowers Food's traded up \$6.12, closing at \$23.20.

5. During January 2003, Patsy J. Aldredge, Robert L. Benton, Jr., Howard M. Courtney, Jerry F. Hancock, II, Herman D. Small, Dan W. Stone, and Charles M. Worthey, all Flowers Foods employees, purchased Flowers Foods securities while in possession of nonpublic, material information regarding these announcements.

6. Defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, directly or indirectly, engaged in acts, practices, and courses of business which have constituted and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] promulgated thereunder.

7. The Commission, pursuant to authority conferred upon it by Sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78w(a)], has promulgated Rule 10b-5 [17 C.F.R. § 240.10b-5] which was in effect at all times relevant herein and remains in effect.

8. The defendants, unless enjoined by this Court, will continue to engage in the acts, practices and courses of business alleged herein, and in acts, practices and courses of business of similar purport and object.

## **JURISDICTION AND VENUE**

9. The Commission brings this action pursuant to authority conferred upon it by Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d)-(e)] seeking to permanently enjoin the defendants from engaging in the transactions, acts, practices and courses of business alleged in this Complaint, and transactions, acts, practices and courses of business of similar purport and object, for disgorgement of illegally obtained funds and other equitable relief, including civil money penalties.

10. Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein. Certain of these acts, practices, and courses of business have occurred within the Middle District of Georgia, including but not limited to, the defendants' acquisition of material nonpublic information and the placement and execution of orders to purchase and sell securities in the form of stock.

11. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the transactions, acts, practices and courses of business constituting violations of the Exchange Act have occurred within the Middle District of Georgia. Among other things, Aldredge, Benton, Hancock, Stone, and Worthey each maintained a principal office in the Middle District of Georgia, acquired material nonpublic information within their offices and further placed and executed orders to purchase and sell Flowers securities within the Middle District of Georgia.

## DEFENDANTS AND RELEVANT ENTITY

12. **Patsy J. Aldredge**, 59, was at all relevant times a resident of Thomasville, Georgia. Aldredge is currently, and was during the relevant period, the administrative assistant for the President and Chief Operating Officer of Flowers Foods.

13. **Robert L. Benton**, 46, was at all relevant times a resident of Thomasville, Georgia. Benton is currently, and was during the relevant period, the Vice President of Manufacturing for Flowers Foods.

14. **Howard M. Courtney**, 43, was at all relevant times a resident of Lawrenceville, Georgia. Courtney was the Vice President of Flowers Snack Sales Group for Flowers Snack, LLC, a subsidiary of Flowers Foods, during the relevant time period. He is currently the Executive Vice President of Flowers Foods Specialty Group, LLC (“Flowers Foods Specialty”), a subsidiary of Flowers Foods.

15. **Jerry F. Hancock, II**, 42, was at all relevant times a resident of Boston, Georgia. Hancock is currently, and was during the relevant period, the Director of Environmental and Regulatory Affairs for Flowers Foods.

16. **Herman D. Small**, 63, was at all relevant times a resident of Hoschton, Georgia. Small was the Vice President of Manufacturing for Mrs. Smith’s Bakeries, a subsidiary of Flowers Foods, during the relevant period. He is currently the Vice President of Manufacturing for Flowers Foods Specialty.

17. **Dan W. Stone**, 47, was at all relevant times a resident of Thomasville, Georgia. Stone was the Vice President of Purchasing for Flowers Bakeries, a subsidiary of Flowers Foods, during the relevant period. He is currently the Vice President of Purchasing for Flowers Foods.

18. **Charles M. Worthey**, 44, was at all relevant times a resident of Thomasville, Georgia. Worthey is currently, and was during the relevant period, the Vice President of Commodity and Supply Operations for Flowers Foods.

19. Flowers Foods is a Georgia corporation headquartered in Thomasville, Georgia. It is one of the largest bakery foods companies in the United States. Flowers Foods common stock trades on the New York Stock Exchange under the symbol “FLO.”

### **FACTS**

#### **A. Flowers Foods’s Insider Trading Policy**

20. During the relevant time, Flowers Foods had a written insider trading policy which was a part of the Flowers Code of Conduct provided to all employees. This policy warned that federal law prohibited buying or selling stock based on material inside information.

21. At each annual review, employees were required to sign a Statement of Understanding and Adherence to the Code of Conduct indicating that they had reviewed the Code of Conduct and would adhere to it.

#### **B. The Facts Leading Up To The Announcements**

22. On December 19, 2002, Flowers Foods issued a press release reporting that the company expected its earnings to be in the range of \$0.12 to \$0.17 per share for the fiscal fourth quarter of 2002. The company also announced that due to the Mrs. Smith’s Bakeries’s continued below-plan performance, the company was reviewing the carrying value of that division’s long-lived assets. The press release also stated that any non-cash charges related to this review would lower the estimated fiscal fourth quarter results of Flowers Foods.

23. Despite the predictions, Flowers Foods's fiscal fourth quarter results exceeded previous expectations. On January 22, 2003, Flowers Foods held an internal meeting to discuss the results of the fiscal fourth quarter 2002, attended by Flowers Foods officers, department heads, and other members of management, including Benton, Courtney, Stone, and Worthey. There was discussion at this meeting regarding the better-than-expected fiscal fourth quarter earnings for 2002.

24. Each of the attendees at the January 22 meeting was provided with a copy of the Fourth Quarter QTD 2002 report. The Fourth Quarter QTD 2002 report included a draft version of Flowers Foods Consolidated Statement of Income for the 12 week period ended December 28, 2002. This draft estimated the Company would earn \$0.23 per share for the quarter.

25. On December 20, 2002, a representative of Schwan Food called the Chief Financial Officer of Flowers Foods to propose a transaction whereby Schwan Food would acquire the frozen baked dessert business of Mrs. Smith's Bakeries and Flowers Foods would retain the division's snack goods and its frozen bread and rolls businesses.

26. From December 29, 2002, through January 30, 2003, there were hundreds of telephone calls, e-mails, conference calls, faxes, and document exchanges between individuals associated with Flowers Foods, its outside legal advisors, its accounting firm, and its financial advisor, as well as other firms and individuals concerning the sale.

**C. The Announcements**

27. On January 30, 2003, prior to the opening of the securities markets, Flowers Foods issued two separate, but simultaneous, press releases. First, Flowers Foods announced that its expected fiscal fourth quarter 2002 EPS prior to all unusual

items would be \$0.21, which was \$0.04 to \$0.09 higher than its previously estimated EPS for the fiscal fourth quarter of 2002 (\$0.12 to \$0.17). In another press release, Flowers Foods disclosed the sale of its Mrs. Smith's Bakeries's frozen dessert business to Schwan Food Company for \$240 million. After the announcements, Flowers Foods traded up \$6.12 from the previous day's close, closing at \$23.20 (a 36% increase).

**D. Benton Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

28. Benton, the Vice President of Manufacturing for Flowers Foods during the relevant period, traded while in possession of, and in reliance upon, material non-public information concerning Flowers Food's better-than expected earnings for the fiscal fourth quarter 2002.

29. Benton signed a Code of Conduct Statement on December 10, 2002, indicating that he had reviewed the Code of Conduct and that he would adhere to it.

30. Prior to his trading, Benton received a copy of Flowers Food's Fourth Quarter QTD 2002 report, containing information concerning Flowers Foods's expected fourth quarter earnings. On January 22, 2003, Benton attended Flowers Foods's fiscal fourth quarter meeting, at which the earnings and other contents of this report were discussed.

**E. Trading By Benton**

31. On January 27, 2003, Benton purchased 1,000 shares of Flowers Foods stock at \$17.00 per share.

32. Benton never sold these shares. His imputed profit, calculated using the closing price for Flowers Foods stock on January 30, 2002, was \$6,200, a 36% return in three days.

**F. Courtney Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

33. Courtney, Vice President of Flowers Snack Sales Group during the relevant period, traded while in possession of, and in reliance upon, material non-public information concerning Flowers Foods's better-than-expected fiscal fourth quarter earnings for 2002.

34. Courtney signed a Code of Conduct Statement on July 11, 2002, indicating that he had reviewed the Code of Conduct and that he would adhere to it.

35. On January 22, 2003, Courtney attended the Flowers Foods's fiscal fourth quarter meeting at which he was provided a copy of the Flowers Foods's Fourth Quarter QTD 2002 report.

**G. Trading By Courtney**

36. On January 23, 2003, Courtney purchased 1,400 shares of Flowers Foods stock at \$17.29 per share and 100 shares at \$17.26 per share.

37. On February 3, 2002, two business days after the January 30, 2002 press release announcing Flowers Foods fiscal fourth quarter earnings for 2002, Courtney sold his shares for \$23.58 per share.

38. Courtney's realized profit was \$9,438, a return of 36% in less than two weeks.

**H. Aldredge Received Material Nonpublic Information In The Course Of Her Employment at Flowers Foods**

39. Aldredge, the administrative assistant to the president and chief operating officer of Flowers Foods, during the relevant period, traded while in possession of, and in

reliance upon, material non-public information concerning the sale of Mrs. Smith's Bakeries's frozen dessert business to Schwan Food.

40. Aldredge signed a Code of Conduct Statement on January 17, 2003, indicating that she had reviewed the Code of Conduct and that she would adhere to it.

41. As administrative assistant, Aldredge was responsible for keeping track of the president's appointments and telephone calls, typing his reports, correspondence and meeting agendas, and organizing meetings. She had the president's password and routinely checked his e-mails.

42. She first learned of the possibility of a sale of Mrs. Smith's Bakeries's frozen dessert business to Schwan Food in September or October 2002, when the president advised her that he would be getting calls in this regard. The president advised her to keep this information confidential.

43. Although those negotiations ultimately fell apart, they were reopened on December 20, 2002, when a representative of Schwan Food contacted the Chief Financial Officer of Flowers Foods to discuss the possible sale of Mrs. Smith's Bakeries's frozen dessert business to Schwan Food. Aldredge learned these discussions that same week.

**I. Trading By Aldredge**

44. On January 7, 2003, Aldredge purchased 500 shares of Flowers Foods stock at \$18.85 per share and 100 shares at \$18.75. She purchased an additional 1,000 shares on January 13, 2003 at \$18.28 per share and 600 shares at \$17.15 per share on January 28, 2003.

45. On January 30, 2003, after the early morning announcements, Aldredge sold 4,300 shares of Flowers Foods. Two thousand two hundred of these shares were

purchased during the relevant period, while she was in possession of material non-public information. Her realized profit on the 2,200 shares was \$11,940, a return of 30% in three weeks.

**J. Hancock Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

46. Hancock, the Director of Environmental and Regulatory Affairs for Flowers Food during the relevant period, traded while in possession of, and in reliance upon, material non-public information concerning the sale of Mrs. Smith's Bakeries's frozen dessert business to Schwan Food.

47. Hancock signed a Code of Conduct Statement in November 2002, indicating that he had reviewed the Code of Conduct and that he would adhere to it.

48. On January 7, 2003, Flower Foods's General Counsel e-mailed Hancock and advised him that Schwan Food was interested in purchasing Mrs. Smith's Bakeries's frozen dessert business. Hancock was responsible for providing any environmental information Schwan Food requested in connection with the sale, and to work with them to facilitate an environmental investigation of Mrs. Smith's Bakeries.

49. Hancock was asked to keep the pending sale confidential and was provided with an alibi to explain his presence at the various Mrs. Smith's Bakeries facilities. His presence was explained as being part of an environmental investigation in connection with the financing of debt.

**K. Trading By Hancock**

50. On January 27, 2003, just three trading days before the press releases were issued, Hancock purchased 600 shares of Flowers Foods stock at \$16.96 per share and 300 shares at \$16.98 per share.

51. Hancock's imputed profit, calculated using a sales price of \$23.20, the closing price for Flowers Foods stock on January 30, 2003, was \$5,610, a return of 37% in three days.

**L. Small Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

52. Small, the Vice President of Manufacturing of Mrs. Smith's bakeries during the relevant period, traded while in possession of, and in reliance upon, material non-public information concerning the sale of Mrs. Smith's Bakeries's frozen dessert business.

53. As a Flowers Foods employee, Small was required to sign a Code of Conduct Statement indicating that he had reviewed the Code of Conduct and that he would adhere to it.

54. Small attended two meetings at the law firm representing Flowers foods in connection with the sale, including one on January 8, 2003, during which the pending sale to Schwan Food was discussed. He knew that the information discussed at those meetings was nonpublic.

**M. Trading By Small**

55. On January 13, 2003, Small purchased 3,000 shares of Flowers Foods stock at \$18.21 per share. In addition, he purchased a total of 389 shares in his and his wife's IRA accounts at \$18.24 per share.

56. On January 31, 2003, one day after the press releases were issued, Small sold 2,400 shares of Flowers Foods stock at 23.83 per share and 600 shares at 23.88 per share.

57. Small's gain as a result of the purchase based upon material non-public information, was \$18,824, including his profit on the 3,000 shares he sold on January 31, 2003, using the actual sales prices, and his imputed profit on the 389 shares he did not sell, calculated using \$23.20, the closing price for Flowers Foods stock on January 30, 2003. In total, his gain was a return of 30% in less than three weeks.

**N. Stone Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

58. Stone, the Vice President of Purchasing for Flowers Bakeries during the relevant period, traded while in possession, and in reliance upon, material non-public information regarding both the better-than-expected fiscal fourth quarter earnings and the sale of Mrs. Smith's Bakeries's frozen dessert business.

59. Stone signed a Code of Conduct Statement on November 27, 2002, indicating that he had reviewed the Code of Conduct and that he would adhere to it.

60. In his capacity as vice president, Stone prepared the quarterly reports for the purchasing group and received company-wide quarterly earnings reports each quarter, in advance of their public release. He attended the January 22, 2003 meeting, at which he learned about Flowers Foods's better-than-expected earnings for the fiscal fourth quarter of 2002. He knew the earnings data was confidential and nonpublic.

61. On January 20, 2003, Stone received an e-mail in connection with a meeting to be held the next day. A document entitled "Mrs. Smith's Divestiture" was

attached to the e-mail. Stone attended this meeting on January 21, at which the company's divestiture of Mrs. Smith's Bakeries's frozen dessert business was discussed.

**O. Trading By Stone**

62. On January 28, 2003, two days before the official earnings report and the press release regarding the sale of Mrs. Smith's Bakeries's frozen dessert business were issued, Stone purchased 450 shares of Flowers Foods stock for \$17.20 per share.

63. Stone's imputed profit, calculated using a sales price of \$23.20, the closing price for Flowers Foods stock on January 30, 2003, was \$2,700, a return of 35% in two days.

**P. Worthey Received Material Nonpublic Information In The Course Of His Employment at Flowers Foods**

64. Worthey, Vice President of Commodity and Supply Operations for Flowers Foods during the relevant period, traded while in possession of, and in reliance upon, material non-public information concerning both the better-than-expected Flowers Foods's fiscal fourth quarter earnings for 2002 and the sale of Mrs. Smith's Bakeries's frozen dessert business to Schwan Food.

65. Worthey signed a Code of Conduct Statement on November 19, 2001, indicating that he had reviewed the Code of Conduct and that he would adhere to it.

66. Worthey learned about Flowers Foods's better-than-expected earnings for the fiscal fourth quarter of 2002 when he attended the January 22, 2003 Flowers Foods fiscal fourth quarter meeting. At that meeting he received a copy of the fourth quarter 2002 earnings information.

67. Worthey knew about the negotiations taking place between Flowers Foods and Schwan Food regarding the Mrs. Smith's Bakeries divestiture when he made his

purchase of Flowers Foods stock on January 24, 2003 because prior to that time he and his supervisor had discussed the possibility of selling Mrs. Smith's Bakeries's frozen dessert business to Schwan Food and they discussed operational plans in the event of a sale.

**Q. Trading By Worthey**

68. On January 24, 2003, Worthey purchased 460 shares of Flowers Foods stock at \$17.17 per share.

69. Worthey's imputed profit, calculated using a sales price of \$23.20, the closing price for Flowers Foods stock on January 30, 2003, was \$2,774, a 35% return in six days.

**COUNT I--FRAUD**

**Violations of Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, Thereunder**

70. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 76, above.

71. At various times from at least January 1, 2003 through at least January 31, 2003, defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, in connection with the purchase and sale of securities described herein, by the use of the means or instrumentalities of interstate commerce or by use of the mails, or of any facility of any national securities exchange, directly and indirectly:

(a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon other persons, as more particularly described above.

72. Defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

73. By reason of the foregoing, Defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey directly and indirectly violated, and unless permanently restrained and enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Commission, respectfully prays that the Court:

I.

Make findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure.

II.

Issue a permanent injunction enjoining defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, and their agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of

the order by personal service or otherwise, and each of them from violating Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

III.

Issue an Order requiring defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey to disgorge all ill-gotten gains and losses avoided as alleged in the Commission's Complaint, plus pay prejudgment interest thereon.

IV.

Issue an Order requiring defendants Aldredge, Benton, Courtney, Hancock, Small, Stone, and Worthey, pursuant to Sections 21(d)(3) and 21A of the Exchange Act [15 U.S.C. 78u(d)(3) and 78u-1], to pay civil monetary penalties.

V.

Issue an Order that retains jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as may be necessary and appropriate.

DATED: February 9, 2005

RESPECTFULLY SUBMITTED,

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/s/

William P. Hicks  
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DISTRICT TRIAL COUNSEL

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