

JUDGE WOOD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

05 CV 8422

U.S. Commodity Futures Trading Commission,

) O5 CIV _____

) Plaintiff,

) COMPLAINT FOR

) v.

) INJUNCTIVE AND OTHER

) EQUITABLE RELIEF AND

) FOR PENALTIES UNDER

) Aleksander Efrosman a/k/a Alex Besser,

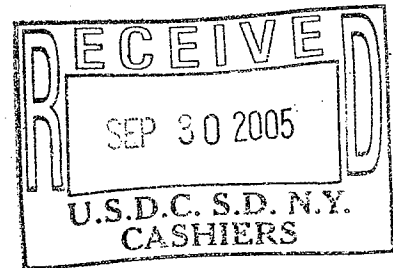
) THE COMMODITY

) AJR Capital, Inc., and

) EXCHANGE ACT

) Century Maxim Fund, Inc.,

) Defendants.



I. SUMMARY

1. From at least April 2004 to at least June 2005, Aleksander Efrosman a/k/a Alex Besser ("Efrosman"), AJR Capital Inc. ("AJR Capital"), and Century Maxim Fund Inc. ("Century Maxim") (collectively, "Defendants") fraudulently solicited and obtained more than \$5.2 million dollars from more than 110 customers. Efrosman misappropriated all of the funds that his customers deposited in accounts he had set up for Century Maxim and AJR Capital, and provided those customers in the meantime with fictitious account statements to mask his misappropriation.

2. The Defendants have engaged, are engaging, or are about to engage in acts and practices which violate Sections 4(a), 4b(a), and 6c(a) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6(a), 6b(a)(2) (2002), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2004).

3. Efrosman was a controlling person of Century Maxim and AJR Capital, and knowingly induced these violations or did not act in good faith, within the meaning

of and, as alleged herein, is liable for the violations of Century Maxim and AJR Capital pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002).

4. Century Maxim and AJR Capital are liable for Efrosman's violations of Sections 4(a), 4b(a) and Commission Regulation 1.1(b), pursuant to Section 2(a)(1)(B) of the Act.

5. In February 2000, Plaintiff, the U.S. Commodity Futures Trading Commission ("Commission") entered an order finding Efrosman liable for various violations of the Act, including Sections 4(a) and 4b(a), in connection with his fraudulent operation of a foreign exchange bucket shop doing business as Global Currencies Ltd. The Commission ordered Efrosman to cease and desist from such violations, and to pay a civil monetary penalty.

6. By the conduct alleged herein, Efrosman has violated the Commission's order, and thereby, violated Section 6c(a) of the Act.

7. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), the Commission brings this action to enjoin the unlawful acts and practices of Defendants, and to compel their compliance with the provisions of the Act and Regulations thereunder.

8. Unless enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices as more fully described below.

II. JURISDICTION AND VENUE

9. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and

sale of commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder. In addition, Section 2(c)(2)(B)(i) and (ii) of the Act, 7 U.S.C. § 2(c)(2)(B) (i) and (ii) (2002), grants the Commission jurisdiction over certain transactions in foreign currency that are contracts for the sale of a commodity for future delivery, including the transactions alleged in this Complaint.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2002), in that Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

III. THE PARTIES

Plaintiff

11. Plaintiff, the Commission, is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2002), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004).

Defendants

12. Aleksander Efrosman, a/k/a Alex Besser, was the principal solicitor and purportedly the sole trader for both Century Maxim and AJR Capital.

13. In August 1997, the Commission filed an administrative action against Efrosman, captioned *In the Matter of Global Currencies Ltd. and Efrosman et al.*, CFTC Docket No. 97-13 (CFTC), charging him and other defendants with transacting in illegal off-exchange foreign exchange futures, fraud, failing to register as an associated person of an FCM, issuing false reports, bucketing, and misappropriation of customer funds.

14. Efrosman was also indicted in the United States District Court for the Southern District of New York for mail and wire fraud in connection with the same activities at issue in the Commission's administrative action.

15. While that indictment and the Commission's enforcement action were pending, Efrosman fled the country.

16. On February 4, 2000, the Commission entered an order finding Efrosman liable for violations of Sections 4(a), 4b(a), 4d, and 4k of the Act and Section 312(a) of the Commission Regulations. The Commission further ordered Efrosman to cease and desist from such violations, and to pay a civil monetary penalty of \$500,000.

17. Efrosman was subsequently extradited from France to face trial on the indictment for mail and wire fraud, and in November 2000 pleaded guilty to nineteen counts of mail and wire fraud before U.S. District Court Judge Rakoff of the Southern District. Efrosman was sentenced to a term of three years imprisonment.

18. Century Maxim Fund, Inc. is a New York corporation incorporated in 2002 with an office in Brooklyn, New York. It has never been registered with the Commission in any capacity.

19. AJR Capital, Inc. is a New York corporation incorporated in 2003 with offices in East Hanover, New Jersey and in Staten Island, New York. AJR Capital has never been registered with the Commission in any capacity.

IV. STATUTORY BACKGROUND

20. Section 2(c)(2)(B)(i)-(ii) of the Act, 7 U.S.C. § 2(c)(2)(B)(i)-(ii) (2002), provides that the Commission shall have jurisdiction over an agreement, contract or transaction in foreign currency that is a sale of a commodity for future delivery, and is “offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is” a regulated entity, as defined therein.

21. Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2002), defines an “eligible contract participant” as an individual with total assets exceeding \$10 million or exceeding \$5 million “and who enters into the agreement, contract, or transaction in order to manage the risk with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.”

22. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002) provides that unless exempted by the Commission, it shall be unlawful for any person to offer to enter into, execute, confirm the execution of, or conduct an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery unless: (a) such transactions have been conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity; (b) such

contracts have been executed or consummated by or through such contract market; and (c) such contract is evidenced by a written record showing the date, parties, property covered, price, and terms of delivery.

23. Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2002) provides in pertinent part that it is unlawful for any person in or in connection with any futures contract of sale of any commodity that is or may be used for hedging or determining the price basis of any transaction or for delivering any commodity in interstate commerce for or on behalf of any other person (i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made any false report or statement thereof, or to enter or cause to be entered any false record, to or for such other person; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract; or (iv) to bucket such order, or to fill such order by offset against the order of any other person.

24. Commission Regulation 1.1, 17 C.F.R. § 1.1 (2004), makes it unlawful for any person, directly or indirectly, in or in connection with any account, agreement, contract or transaction (subject to the Commission's foreign exchange jurisdiction, as set forth herein): (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

V. FACTUAL BACKGROUND

Century Maxim

25. Efrosman created Century Maxim in October 2002.

26. In or around late 2003, Efrosman targeted his first Century Maxim investor. Efrosman presented himself to that investor as Alex Besser, a successful foreign exchange trader with over a decade's experience trading for large investors out of an office in Manhattan.

27. When his initial investor expressed interest, Efrosman offered him the opportunity to invest, emphasizing that he was making an exception for him, since he was, compared with his other Century Maxim clients, a small investor. In fact, Efrosman had no other clients, and had no intention of trading foreign exchange with the money he was soliciting.

28. The initial investor invested \$90,000 in or around May, 2004.

29. Efrosman generated fictitious Century Maxim account statements in that investor's name, showing his investment appreciating by substantial margins – between 10 and 30 percent each month.

30. After receiving those fictitious statements, the investor invested another \$92,000 with Century Maxim in June 2004.

31. Efrosman never traded foreign exchange contracts with those funds.

32. Efrosman drew on those funds for personal expenses, including gambling, car payments, restaurant bills, and periodic cash withdrawals from ATMs.

AJR Capital

33. By August 2004, Efrosman began to promote a new venture, AJR Capital, to be aimed at "smaller investors" interested in capitalizing on the investment opportunity that trading with Efrosman purportedly presented.

34. Efrosman persuaded his initial Century Maxim investor and that investor's son, among others, to recruit investors for AJR Capital. These individuals agreed to solicit customers on Efrosman's behalf to invest at least \$25,000 with AJR Capital.

35. Efrosman's initial investor told prospective customers that their accounts would be managed and traded by Efrosman.

36. Prospective customers were told to expect returns of between 13% and 28% percent per month, based on the experience of Efrosman's Century Maxim investor.

37. Efrosman also solicited new customers for AJR Capital, and, on several occasions, attended meetings with prospective investors.

38. At these meetings, and in written materials distributed to prospective investors, Efrosman promised to double their investment within four months; cited his practice of "controlling risk" by putting a "3 percent stop-loss" on all of his trades; claimed that he had never had a losing month trading foreign exchange for Century Maxim or AJR Capital; and, that the owners of a large hotel chain had invested \$15 million with Century Maxim. All of these representations were fabrications.

39. After they invested, AJR Capital customers were sent monthly account summaries, printed on AJR Capital letterhead.

40. All AJR Capital customers showed the same trading activity in their account summaries. The account statements always showed profits.

41. Since departing from Key West, Florida on a Caribbean cruise on June 2, 2005, Efrosman has not been heard from by any of the investors in Century Maxim and AJR Capital.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT I - Violation of Section 4b(a)(2) of the Act: Fraud in the Sale of Futures Contracts

42. Paragraphs 1 through 41 are re-alleged and incorporated herein.

43. During the relevant time period, Defendants Century Maxim, AJR Capital, and Efrosman cheated or defrauded or attempted to cheat or defraud investors or prospective investors of Century Maxim and AJR Capital, willfully made or caused to be made false reports or statements, and willfully deceived or attempted to deceive investors or prospective investors by, among other things: misappropriating funds received from investors and making false statements regarding trading losses, the risks of trading foreign currencies, the legitimacy of their operation, and the safety of investor funds, all in violation of Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2002).

44. Defendants' conduct was in connection with orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, and such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (2002).

45. From at least April 2004 and continuing to at least June 2005, Efrosman, as the owner and operator of Century Maxim and AJR Capital, directly or indirectly controlled Century Maxim and AJR Capital and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count I.

46. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), as described in this Count I, Efrosman is liable for the violations described in this Count I, to the same extent as Century Maxim and AJR Capital.

47. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), Century Maxim and AJR Capital are liable for any violations of Section 4b(a) of the Act by its officers, directors, managers, employees, and agents, including Efrosman, in that all such violations were within the scope of their office or employment with Century Maxim and AJR Capital.

48. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a) of the Act.

COUNT II - Violation of Commission Regulation 1.1(b): Fraud In Connection With Transactions In Retail Foreign Currency Futures

49. Paragraphs 1 through 48 are re-alleged and incorporated herein.

50. During the relevant time period, Defendants Century Maxim, AJR Capital, and Efrosman directly or indirectly, in or in connection with accounts, agreements, contracts or transactions subject to the Commission's jurisdiction over retail foreign currency futures, cheated or defrauded or attempted to cheat or defraud the customers of Century Maxim and AJR Capital; willfully made or caused to be made to those customers false reports or statements or caused to be entered for those customers false records; or willfully deceived or attempted to deceive those customers by various means, all in violation of Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2004).

51. Defendants' conduct was in connection with accounts, agreements, contracts or transactions in retail foreign currency futures subject to the Commission's jurisdiction, as provided for in Section 2(c)(1) of the Act.

52. None of the defendants is a person described in Section 2(c)(2)(B)(ii)(II) or Section 2(c)(2)(B)(ii)(III) of the Act.

53. From at least April 2004 and continuing to at least June 2005, Efrosman, as the owner and operator of Century Maxim and AJR Capital, directly or indirectly controlled Century Maxim and AJR Capital and its schemes and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II.

54. Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), as described in this Count II, Efrosman is liable for the violations described in this Count II, to the same extent as Century Maxim and AJR Capital.

55. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), Century Maxim and AJR Capital are liable for any violations of Commission Regulation 1.1(b) by its officers, directors, managers, employees, and agents, including Efrosman, in that all such violations were within the scope of their office or employment with Century Maxim and AJR Capital.

56. Each material misrepresentation or omission, false statement, misappropriation of investor funds, and willful deception made during the relevant period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Commission Regulation 1.1(b).

COUNT III – Violations of Section 4(a) of the Act: Sale of Illegal Off-Exchange Futures Contracts

57. Paragraphs 1 through 56 are re-alleged and incorporated herein.

58. Since at least April 2004 and continuing to at least June 2005, Century Maxim, AJR Capital, and Efrosman offered to enter into, executed, confirmed the execution of, or conducted an office or business in the United States for the purpose of soliciting, accepting any order for, or otherwise dealing in transactions in, or in connection with, a contract for the purchase or sale of a commodity for future delivery when: (a) such transactions were not conducted on or subject to the rules of a board of trade which was designated or registered by the CFTC as a contract market or derivatives transaction execution facility for such commodity, and (b) such contracts were not executed or consummated by or through such contract market, in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002).

59. From at least July 2004 and continuing to at least June 2005, Efrosman, as the owner and operator of Century Maxim and AJR Capital, directly or indirectly controlled Century Maxim and AJR Capital and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations described in this Count II. Thus, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2002), Efrosman is liable for the violations of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2002), described in this Count II, to the same extent as Century Maxim and AJR Capital.

60. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2004), Century Maxim and AJR Capital are liable for any violations of Section 4(a) of the Act by its officers, directors,

managers, employees, and agents, including Efrosmen, in that all such violations were within the scope of their office or employment with Century Maxim and AJR Capital.

61. Each foreign currency futures transaction not conducted on a designated contract market or registered derivatives transaction execution facility made during the relevant time period, including but not limited to those conducted by Defendants as specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act.

COUNT IV – Efrosmen’s Violation of a Commission Order

62. Paragraphs 1 through 61 are re-alleged and incorporated herein.

63. In February 2000, the Commission entered an order adjudging Efrosmen liable for violations of Sections 4(a) and 4b(a) of the Act, ordering Efrosmen to cease and desist from such conduct, and assessing a civil monetary penalty.

64. By the conduct alleged herein in Counts I, II, and III, Efrosmen violated the Commission’s February 2000 order, and thereby violated Section 6c(a) of the Act.

65. Pursuant to Section 6c(c) of the Act, 7 U.S.C. § 13a-1(c), this Court has jurisdiction to “command[] any person to comply with the provisions of [the Act], or any rule, regulation, or order of the Commission thereunder.” Accordingly, the Commission brings this action to enforce compliance with its February 2000 order.

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), and pursuant to the Court’s own equitable powers:

A. Find that Defendants violated Sections 4(a), 4b(a), and 6c(a) of the Act, 7 U.S.C. §§ 6(a), 6b(a) and 13a-1 (2002), and Commission Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2004);

B. Enter an *ex parte* statutory restraining order and an order of preliminary injunction restraining and enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations; and

3. withdrawing, transferring, removing, dissipating, concealing, or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of any of the Defendants;

C. Enter orders of preliminary and permanent injunctions prohibiting Defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4(a), 4b(a) and 13a-1 of the Act, 7 U.S.C. §§ 6(a), 6b(a) and 13a-1 (2002), and Regulation 1.1(b), 17 C.F.R. § 1.1(b) (2004); and

2. soliciting funds for, engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of himself or any other person or entity, whether by power of attorney or otherwise;

D. Enter an order directing Defendants to take such steps as are necessary to repatriate to the territory of the United States all funds and assets of Century Maxim and AJR Capital customers described herein which are held by Defendants or are under their direct or indirect control, jointly or singly, and deposit such funds into the Registry of this Court and provide the Commission, and the Court with a written description of the funds and assets so repatriated;

E. Enter an order directing Defendants, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations;

F. Enter an order directing Defendants to make full restitution to every investor whose funds were received by them as a result of acts and practices which

constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

G. Enter an order assessing a civil monetary penalty against each defendant in the amount of not more than the higher of \$130,000 or triple the monetary gain to the defendant for each violation by the defendant of the Act and Commission Regulations;

H. Enter an order directing that Defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity transactions, including salaries, commissions, interest, fees, loans and other disbursements of money and property of any kind, from, but not limited to, December 2000 through and including the date of such accounting;

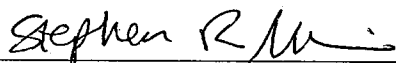
I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2002);

J. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: New York, NY
September 30, 2005

U.S. COMMODITY FUTURES TRADING COMMISSION

Stephen J. Obie
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