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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KCM ADVISORS INC.,

Plaintiff,

- against -

RAZOR FX, INC., MICHAEL RICHARD
MACCAULL, BRADLEY EISNER,

Defendants.

CV 08 306

Civil Action No. PLATT, J.

COMPLAINT AND
JURY DEMAND

FILED (S) (S)
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 22 2008 ★

BROOKLYN OFFICE

Plaintiff KCM Advisors Inc. ("KCM"), by its attorneys, Torys LLP, for its complaint against defendants Razor FX, Inc. ("Razor FX"), Michael Richard MacCaull ("MacCaull"), and Bradley Eisner ("Eisner"), states as follows:

PRELIMINARY STATEMENT

1. This action arises out of a Ponzi scheme perpetrated by defendants upon KCM and others.
2. Defendants held themselves out to the public and represented to KCM that they operated a business engaged in spot trading of foreign currencies. In reliance on defendants' representations, KCM invested \$1,816,966 with defendants and authorized defendants to act as KCM's agent and attorney-in-fact to engage in spot foreign currency trades.

3. In truth, defendants did not engage in spot trading of foreign currencies to any substantial extent. Rather, defendants prepared fictitious statements of account showing KCM's purported profits and instead took KCM's money to pay "commissions" to themselves and others, to afford themselves a luxurious lifestyle and to make payments to earlier investors.

4. The scheme collapsed upon the arrest of MacCaull and the filing of federal criminal charges of mail and wire fraud in this Court on January 14, 2008. Upon information and belief, Eisner has admitted to participating with MacCaull in a scheme to defraud KCM and other investors through Razor FX.

THE PARTIES

5. Plaintiff KCM is a corporation formed under the laws of British Columbia, Canada, with its principal place of business in British Columbia, Canada. Jeffrey Wheeler ("Wheeler"), a citizen and resident of British Columbia, is the president of KCM and acted on behalf of KCM in connection with the events described herein.

6. Defendant Razor FX is a New York corporation with its principal place of business located, upon information and belief, in Great Neck, New York.

7. Upon information and belief, defendant MacCaull is a citizen of New York and a principal owner of Razor FX.

8. Upon information and belief, defendant Eisner is a citizen of New York and a principal owner and president of Razor FX.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2) because (i) KCM is a British Columbia corporation with its principal place

of business in British Columbia, Canada; (ii) Razor FX is a New York corporation with its principal place of business in New York; (iii) MacCaull is a citizen of New York; (iv) Eisner is a citizen of New York; and (v) the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because KCM's claims arise under the laws of the United States.

11. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the claims asserted here that arise under state law.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because this is the judicial district in which a substantial part of the events that give rise to the claims herein occurred.

FACTS RELEVANT TO THE CLAIMS FOR RELIEF

13. In or around February 2007, Eric Kimia ("Kimia"), a resident of Vancouver, British Columbia, approached Wheeler and solicited Wheeler to invest money with Razor FX to participate in spot trading of foreign currencies by Razor FX. Wheeler understood that Kimia was acting as an agent of defendants and that Kimia would receive a share of any "commissions" paid to Razor FX by customers he solicited for and referred to Razor FX. Wheeler reposed trust and confidence in Kimia with respect to spot trading of foreign currencies and investing with Razor FX.

14. Defendants, directly or through their agent Kimia, represented to Wheeler that they (a) operated a business engaged in spot trading of foreign currencies, (b) used a disciplined trading model, whereby they pooled the funds of all their clients and made between one and

three trades per week with the pooled funds, with a goal of earning a return of approximately 1% per week, and (c) had been successful in accomplishing that goal over an extended period of time.

15. Defendants did not disclose to Wheeler, directly or through their agent Kimia, that (a) Razor FX was a sham and none of the defendants engaged in spot trading of foreign currencies, (b) defendants prepared fictitious statements detailing clients' purported profits and losses, minus trading commissions, and (c) Eisner and MacCaull used the money invested by clients with Razor FX for their own lavish personal expenditures and to make payments to prior investors.

16. In reliance upon defendants' material representations and omissions of fact, Wheeler caused KCM to enter into a Customer Agreement with Razor FX, authorizing Razor FX to engage in spot trading of foreign currencies for KCM's account.

17. Wheeler also caused KCM to execute a Trading Authorization Power of Attorney, by which KCM authorized Razor FX "as its agent and attorney-in-fact" to engage in spot trading of foreign currencies, according to the terms of the Customer Agreement, for the account of KCM.

18. Razor FX represented to KCM that it established a segregated account for KCM, designated by Razor FX as Account Number RFX 128635.

19. On or about May 15, 2007, Wheeler caused KCM to invest \$100,000 with defendants by wire transferring \$100,000 to Razor FX's bank account at North Fork Bank, 1010 Northern Boulevard, Great Neck, New York 11021.

20. Each week, beginning on or about May 21, 2007, and continuing through January 7, 2008, Razor FX, directly from Eisner or through Kimia, e-mailed to Wheeler a statement of account from Razor FX purportedly reflecting KCM's account with Razor FX and stating KCM's equity in the account. Each statement of account indicated that Eisner was the "Broker" for KCM's account.

21. In reliance upon defendants' representations and the statements of account, Wheeler caused KCM to invest an additional \$1,716,966 (for a total investment of \$1,816,966) with defendants by wire transferring \$900,000 on September 26, 2007 and \$816,966 on October 23, 2007 to Razor FX's bank account with North Fork Bank in Great Neck, New York.

22. Beginning in or about August, in addition to each statement of account, Kimia sent Wheeler an e-mail describing the nature of and return on each week's trades by defendants.

23. In or about November 2007, Kimia told Wheeler that he would reduce the effective rate of the commissions KCM was paying for Razor FX's purported trades by rebating to KCM half of Kimia's share of those commissions.

24. On or about December 4, 2007, Kimia sent KCM a check for \$11,266, written on the account of Messina Financial Inc., which, upon information and belief, is controlled by Kimia. This check represented a rebate of half of Kimia's share commissions Razor FX charged KCM for the period from May through November 2007.

25. On or about January 7, 2008, Kimia sent KCM a check for \$4,277, written on the account of Messina Financial Inc., as a rebate of half of Kimia's share of commissions Razor FX charged KCM for December 2007.

26. KCM received its last statement of account from Razor FX on January 7, 2008. It reflected KCM's purported equity in its Razor FX account as \$2,031,164.57.

27. On or about January 8, 2008, Wheeler, on KCM's behalf, submitted a written request to Razor FX, through Kimia, to withdraw \$1.35 million from its Razor FX account. On or about January 9, 2008, Wheeler, on KCM's behalf, submitted a wire transfer request directly to Razor FX for the same amount. Prior to making the withdrawal request, Kimia had told Wheeler on several occasions that KCM could expect to have withdrawn funds from its Razor FX account wired within 48 hours.

28. When the funds were not forthcoming, Kimia told Wheeler that Razor FX had previously informed clients in Canada that they should allow at least four business days for a wire transfer from Razor FX.

29. Between January 8 and January 15, 2008, Wheeler and others acting on behalf of KCM sent numerous e-mails and placed numerous phone calls to Razor FX, Eisner and Kimia with respect to the withdrawal request and wire transfer request, but failed to make contact and received no response to messages left with Eisner and Kimia.

30. Defendants failed and refused to honor the withdrawal request and failed and refused to remit funds to KCM from its Razor FX account.

31. On January 15, 2008, Wheeler learned that MacCaul had been arrested and charged in this Court with numerous counts of mail and wire fraud in connection with his operation of Razor FX. The criminal action against MacCaul is captioned United States v. Michael Richard MacCaul, No. M-08-034-RER (E.D.N.Y.).

32. Wheeler also received notice from the Eastern District of New York Victim Rights Unit that KCM may be a victim of crimes committed by defendants.

33. According to an affidavit filed in support of the United States Attorney's application for an arrest warrant for MacCaull (the "Affidavit"), MacCaull "together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud investors in Razor FX, and to obtain money and property from them, by means of materially false and fraudulent pretenses, representations and promises."

34. Many of the facts set forth in the Affidavit were obtained from a Confidential Source, who stated that "he and defendant MICHAEL RICHARD MACCAULL are the principles of Razor FX." Because Eisner is the President of Razor FX, upon information and belief, Eisner is the Confidential Source.

35. According to the Affidavit, Eisner stated that neither he nor MacCaull had traded in the foreign exchange market on behalf of investors, including KCM. Eisner further stated that he prepared fictitious statements detailing profits and losses, minus trading commissions, which he e-mailed to investors, including KCM.

36. According to the Affidavit, Eisner further stated that investors who withdrew funds were simply paid out of money provided by new investors; that he and MacCaull afforded themselves salaries and other perks out of the investors' money; and that he and MacCaull had been defrauding investors of millions of dollars since the inception of the Razor FX scheme.

37. According to the Affidavit, Eisner stated that, except for a small number of trades he or MacCaull placed with two foreign exchange counterparties, no trading had taken place at Razor FX on behalf of investors.

**FIRST CLAIM FOR RELIEF: VIOLATION OF 18 U.S.C. § 1961, et seq.
(RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT)
(against all defendants)**

38. Razor FX is an enterprise within the meaning of 18 U.S.C. § 1961(4), which is engaged in, or the activities of which affect, interstate or foreign commerce. The fraudulent misrepresentations detailed above were made by or on behalf of defendants to KCM.

39. The fraudulent misrepresentations set forth above represented a scheme and artifice to defraud KCM, which was facilitated by use of the United States Mail, caused by defendants, and resulting in mail fraud within the meaning of 18 U.S.C. § 1341.

40. Mail fraud constitutes racketeering activity as that term is defined in 18 U.S.C. § 1961(1)(B).

41. The fraudulent misrepresentations set forth above represented a scheme and artifice to defraud KCM, which was facilitated by use of telephone, bank wires, e-mail and facsimile, caused by defendants, and resulting in wire fraud within the meaning of 18 U.S.C. § 1343.

42. Wire fraud constitutes racketeering activity as that term is defined in 18 U.S.C. § 1961(1)(B).

43. Defendants' multiple fraudulent misrepresentations as detailed above constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5).

44. Defendants MacCaull and Eisner and their agents, associates, and representatives, have conducted, and conspired to conduct, the affairs of Razor FX through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), (d).

45. As a direct and proximate result of these violations of 18 U.S.C. § 1962(c), (d), KCM has suffered actual damages as a result of injury to its business and property of at least \$1,816,966, plus interest.

46. Defendants are liable to KCM for treble damages, together with all costs of this action plus reasonable attorneys' fees, all as provided under 18 U.S.C. § 1964(c).

**SECOND CLAIM FOR RELIEF: NY GENERAL BUSINESS LAW § 349
(against all defendants)**

47. N.Y. Gen. Bus. Law § 349 prohibits deceptive acts and practices in the conduct of any business, trade or commerce in the state of New York.

48. By reason of the acts and practices alleged above, defendants have repeatedly violated N.Y. Gen. Bus. Law § 349.

49. As a direct and proximate result of these violations of N.Y. Gen. Bus. Law § 349, KCM has suffered actual damages as a result of injury to its business and property of at least \$1,816,966, plus interest.

50. Defendants are liable to KCM for treble damages, together with all costs of this action plus reasonable attorneys' fees, all as provided under N.Y. Gen. Bus. Law § 349.

**THIRD CLAIM FOR RELIEF: FRAUD
(against all defendants)**

51. Defendants knowingly and materially misrepresented to KCM that they would engage in spot trades of foreign currencies for KCM's account and, through the issuance of weekly statements of account, knowingly and materially misrepresented to KCM that they were engaging in such trades and that KCM was profiting from such trades. Defendants further

knowingly omitted to disclose material facts concerning MacCaull's status as a convicted felon and the sham nature of defendants' operation.

52. Defendants' material misrepresentations to KCM were made with fraudulent intent for the purpose of inducing KCM to invest money in Razor FX and otherwise deceiving KCM.

53. In reasonable reliance on defendants' material misrepresentations, KCM invested \$1,816,966 with defendants for the sole purpose of engaging in spot trading of foreign currencies.

54. As a direct and proximate cause of defendants' knowing and material misrepresentations and omissions, KCM has suffered direct, indirect, and consequential damages.

55. By reason of the foregoing, KCM is entitled to a judgment against defendants, jointly and severally, in an amount not less than \$1,816,966, plus interest.

**FOURTH CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTIES
(against all defendants)**

56. Defendants were agents of KCM to engage in spot trading of foreign currencies and owed KCM fiduciary duties, including the duty of loyalty and the duty to act in the utmost good faith and in the interest of KCM throughout their relationship.

57. In breach of their fiduciary duties, defendants took KCM's money invested with Razor FX and used the money to afford themselves salaries and perks, as well as to pay other investors who made requests to withdraw funds from Razor FX.

58. The breaches of fiduciary duties by defendants caused damages to KCM of not less than \$1,816,966, plus interest.

59. By reason of the foregoing, KCM is entitled to a judgment against defendants, jointly and severally, in an amount not less than \$1,816,966, plus interest.

**FIFTH CLAIM FOR RELIEF: BREACH OF CONTRACT
(against Razor FX)**

60. KCM entered into a Customer Agreement with Razor FX in which, among other terms, Razor FX agreed to engage in spot trading of foreign currencies for KCM's account in exchange for KCM depositing funds into Razor FX's bank account and Razor FX collecting a commission on each trade for KCM's account.

61. KCM performed all of its obligations under the Customer Agreement.

62. Razor FX failed to engage in spot trading of foreign currencies for KCM's account and failed and refused to respond to KCM's request to withdraw funds from its account with Razor FX, in material breach of the Customer Agreement, causing damages to KCM of not less than \$1,816,966.

63. By reason of the foregoing, KCM is entitled to a judgment against Razor FX in an amount not less than \$1,816,966, plus interest.

**SIXTH CLAIM FOR RELIEF: CONVERSION
(against all defendants)**

64. Defendants owed KCM fiduciary duties and had a duty to engage in spot trading of foreign currencies for KCM's account and to remit KCM's funds upon a withdrawal request.

65. KCM has demanded a withdrawal from KCM's account with Razor FX and defendants have failed and refused to remit the funds.

66. Defendants wrongfully converted KCM's cash investments with Razor FX, which rightfully belong to KCM, to their own use and benefit.

67. By reason of the foregoing, KCM is entitled to a judgment against defendants, jointly and severally, in an amount not less than \$1,816,966, plus interest.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully prays for and demands judgment be granted in its favor and against defendants as follows:

- (i) on the first claim for relief awarding treble damages against defendants, jointly and severally, in an amount to be determined at trial;
- (ii) on the second claim for relief awarding treble damages against defendants, jointly and severally, in an amount to be determined at trial;
- (iii) on the third claim for relief awarding damages against defendants, jointly and severally, in an amount to be determined at trial
- (iv) on the fourth claim for relief awarding damages against defendants, jointly and severally, in an amount to be determined at trial;
- (v) on the fifth claim for relief awarding damages against defendants, jointly and severally, in an amount to be determined at trial
- (vi) on the sixth claim for relief awarding damages against defendants, jointly and severally, in an amount to be determined at trial;

- (vii) punitive damages in an amount to be determined at trial;
- (viii) on all claims for relief all costs and reasonable attorneys' fees; and
- (ix) such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

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Dated: New York, New York
January 22, 2008

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