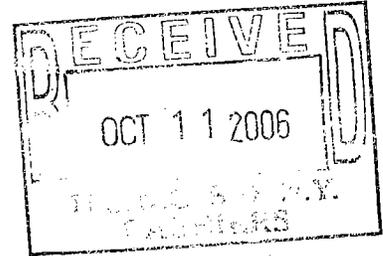


JUDGE PRESKA

06 CV 8291

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

- against -

STEVEN B. MARKOVITZ,

Defendant.
-----X

06 Civ. _____

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Steven B. Markovitz ("Markovitz") alleges as follows:

PRELIMINARY STATEMENT

1. In October 2003, the Commission issued an order that permanently barred Markovitz from associating with an investment adviser. The order found that Markovitz, a hedge-fund trader, had engaged in a fraudulent scheme to late trade mutual funds in violation of the federal securities laws.

2. One year later, Markovitz began violating the Commission bar order. Beginning in November 2004, Markovitz violated the Commission's bar order by forming an investment

advisory firm and providing investment advisory services to investors through that firm.

Markovitz's violation of the order continued until discovered by the Commission in May 2006.

3. Markovitz's violation of the Commission bar order was knowing and willful. Markovitz disregarded advice of counsel that his conduct would violate the Commission bar order.

4. By virtue of this conduct, Markovitz also willfully and intentionally violated Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-3(f), which prohibits persons subject to investment adviser bars from violating those bars.

5. Unless Markovitz is permanently enjoined by this Court, he will continue to engage in violations of the Commission's investment adviser bar against him, other Commission orders, and Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

6. By this action, the Commission seeks: (a) permanent injunctive relief to enjoin Markovitz from continuing and further, direct or indirect, violations of: (i) the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings and Imposing Remedial Sanctions (the "Order"), entered on October 2, 2003 in *In the Matter of Steven B. Markovitz*, Admin. Proc. No. 3-11292; (ii) Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f); and (iii) the Order Making Findings and Imposing Disgorgement and Civil Penalties Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, entered in *In the Matter of Steven B. Markovitz*, Admin. Proc. No. 3-11292; (b) disgorgement of all ill-gotten gains based on

upon the conduct alleged herein, together with prejudgment interest; (c) civil fines and/or penalties; and (d) such further relief as the Court deems appropriate.

JURISDICTION AND VENUE

7. The Court has jurisdiction of this action pursuant to Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d).

8. Markovitz resides in and committed violations of the Order in New York, New York.

THE DEFENDANT

9. **Markovitz**, 43, resides in New York, New York. From 1999 to September 2003, Markovitz was employed as a trader at Millennium Partners, L.P., a hedge fund, where he traded mutual funds. On October 2, 2003, the same day that the Commission issued the Order, Markovitz pleaded guilty to a felony under New York's Martin Act for his late trading conduct. Markovitz is currently awaiting sentencing.

OTHER RELEVANT ENTITIES AND INDIVIDUALS

10. **Saxum Ltd.**, the unregistered investment adviser to Saxum Investments Ltd., is a Cayman Islands corporation formed in November 2004 by Markovitz and Individual No. 1. From its inception in November 2004 until May 2006 when Markovitz resigned, Markovitz, Individual No. 1, and Individual No. 2 were the principals of Saxum Ltd. During this period, they controlled, coordinated and directed the activities of Saxum Ltd. from their homes and offices in the United States.

11. **Saxum Investments Ltd.** is a Caymans Island corporation formed under the Caymans Islands Mutual Funds Law and incorporated by Markovitz and Individual No. 1.

12. **Individual No. 1**, a resident of Pound Ridge, New York, founded the Saxum entities with Markovitz. Individual No. 1 largely was responsible for the operations and administration of the Saxum entities.

13. **Individual No. 2**, a resident of Florida, was, with Markovitz and Individual No. 1, a principal of Saxum Ltd. He also devised and implemented trading strategies for Saxum Investments and executed those strategies from his office in Florida.

FACTS

14. In the fall of 2003, the Commission and the New York State Attorney General began to bring a series of legal proceedings against entities and individuals who engaged in fraudulent market timing and late trading of mutual funds. On October 3, 2003, the Commission commenced an administrative action against Markovitz and issued the Order, which barred Markovitz from association with any investment adviser. Markovitz consented to the entry of the Order without admitting or denying the findings therein. Also on October 2, 2003, Markovitz pleaded guilty to a felony under New York law related to his late trading activities.

15. In the Order, the Commission found that, from 1999 to 2003, Markovitz, a trader at the hedge fund Millennium Partners, L.P., engaged in a fraudulent scheme to late trade mutual funds. The Commission further found that Markovitz had violated, among other things, the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 by conducting this late trading scheme.

16. After entry of the Order, Markovitz endeavored to earn a living by trading his own personal brokerage account and starting a real estate development business. Dissatisfied and unsuccessful at these efforts, Markovitz wished to reenter the investment advisory business, despite the Commission's bar on his association with an investment adviser.

17. In the fall of 2004, Markovitz began discussions with Individual No. 1 about starting an offshore investment adviser to manage an offshore hedge fund. Markovitz planned to run the business from an office in Manhattan and from his home, also located in Manhattan.

18. In November 2004, Markovitz and Individual No. 1 formed Saxum Ltd., an investment adviser incorporated under the laws of the Cayman Islands. Markovitz provided the money required to start the adviser. Individual No. 1, with assistance of counsel located in the Cayman Islands, drafted and filed the appropriate corporate documents to form Saxum Ltd. in the Cayman Islands. Neither Markovitz nor Individual No. 1 traveled to the Caymans in connection with the formation of Saxum Ltd., and Saxum Ltd.'s presence in the Caymans was limited to a mail box. Furthermore, Saxum Ltd. had no employees or offices in the Cayman Islands.

19. Markovitz and Individual No. 1 agreed to share any profits generated by Saxum Ltd. After forming Saxum Ltd, Markovitz and Individual No. 1 brought in Individual No. 2 as a principal of the firm. Markovitz, along with Individual No. 2, was to be responsible for developing and implementing Saxum Ltd.'s trading strategies, while Individual No. 1 was to be responsible for Saxum Ltd.'s operations.

20. In early 2005, after the creation of Saxum Ltd., Markovitz sought the advice of attorneys on how and whether he could associate with an investment adviser without violating the Order. Aware that Markovitz was planning on conducting Saxum Ltd.'s business from the United States, Markovitz's counsel advised him not to conduct the business from the United States. Markovitz, however, disregarded this advice.

21. In February 2005, Markovitz and Individual No. 1 incorporated Saxum Investments under Cayman Islands law. Markovitz planned to have Saxum Ltd. run Saxum

Investments, manage its portfolio, solicit prospective investors, and communicate with investors.

Markovitz again personally funded the start-up costs associated with Saxum Investments.

22. During June 2005, Markovitz traveled to Brazil, Great Britain, and Switzerland and solicited investors to invest in Saxum Investments. Additionally, Markovitz called investors from, and met with investors in, New York City.

23. In August 2005, investors, including Individual No. 1 and Markovitz, began investing money in Saxum Investments. Markovitz, through Saxum Ltd., began managing Saxum Investments' assets. As he had planned — and against his attorney's advice — Markovitz (along with Individual No. 1 and Individual No. 2) conducted nearly all of Saxum Ltd.'s operations in and from the United States. Markovitz maintained an office, placed orders to buy and sell securities for Saxum Investments, and met and communicated with investors and potential investors in and from New York City.

24. With the exception of one board meeting in early 2006, none of the Saxum entities' activities was conducted in the Cayman Islands.

25. During the relevant time period, Saxum Ltd. was an investment adviser because it engaged in the business of advising Saxum Investments as to the value of securities and as to the advisability of investing, purchasing, and selling securities for compensation. During the relevant time period, Markovitz was associated with Saxum Ltd.

26. On May 9, 2006, after inquiries into Markovitz's employment activities by the Commission staff and attorneys with the New York State Attorney General, Markovitz resigned from Saxum Ltd.

CLAIM FOR RELIEF

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. In October 2003, the Commission issued the Order, which barred Markovitz from associating with an investment adviser pursuant to Section 203(f) of the Advisers Act.

29. Between on or about November 2004 and on or about May 2006, Markovitz associated with an investment adviser that conducted activities within and from the United States.

30. By reason of the foregoing, Markovitz, willfully and intentionally, violated and, unless enjoined, will continue to violate the Order, which bars him from associating with any investment adviser. By willfully and intentionally violating the investment adviser bar provision of the Order, Markovitz also has violated and, unless enjoined, will continue to violate Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court

1. Issue findings of fact and conclusions of law that Markovitz violated the Order and Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

2. Enter a final judgment: (a) permanently enjoining Markovitz from, directly or indirectly, violating or continuing to violate: (i) the Order, (ii) Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f), and (iii) the Order Making Findings and Imposing Disgorgement and Civil Penalties Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, entered in *In the Matter of Steven B. Markovitz*, Admin. Proc. No. 3-11292; (b) ordering disgorgement of all ill-gotten gains based upon his conduct alleged herein, together with prejudgment interest; and (c) ordering him to pay civil fines and/or penalties under Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

3. Retain jurisdiction over this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that might be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

4. Grant such other and further relief as this Court may determine to be just and necessary.

Dated: New York, New York
October 11, 2006

By: 

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