

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

Copernic, Inc.,
Complainant,

v.

Forex Capital Markets, L.L.C.,
Respondent.

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Docket No. 07-R024

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ORDER OF DISMISSAL

On February 12, 2007, Complainant Copernic, Inc., filed its third action against Respondent Forex Capital Markets, L.L.C., based on the same nucleus of events, involving 2002 and 2003 foreign exchange currency contracts, and on the same cause of action. On February 10, 2005, the United States District Court for the Southern District of New York rejected Complainant's claims under the Commodity Exchange Act on the grounds that it lacked subject matter jurisdiction over matters involving off-exchange contracts in foreign currency. 356 F. Supp. 2d 332 (S.D.N.Y. 2005). Complainant did not appeal the District Court's jurisdictional ruling, but instead, on May 20, 2005, filed related state law claims. The Supreme Court of New York dismissed the claims on March 1, 2006,¹ and the New York appellate court dismissed the appeal of the initial state decision on June 20, 2006.² The New York Supreme Court noted that "This complaint is virtually identical to the complaint dismissed in federal court in its factual allegations, although it relies exclusively on New York law." *Ibid.*

On May 14, 2007, Respondent filed a Motion for Reconsideration of the Determination to Forward the Complaint. As grounds for their Motion, Respondent cited the passage of time and the prior decisions, alleging that the current proceeding was barred by the doctrine of *res judicata* and by the Statute of Limitations.

On August 10, 2007, this Court issued a Ruling on Respondent's Motion to Reconsider its Motion for Dismissal. The Court, in effect, ordered the parties to file papers addressing the statute of limitations and *res judicata* issues raised in Respondent's May 14, 2007 Motion for Reconsideration of the Determination to Forward the Complaint.

¹ See *Krause v. Forex Exchange Market, Inc.*, 824 N.Y.S. 2d 755 (2006).

² See *Krause v. Forex Capital Markets, L.L.C.*, 2006 N.Y. App. Div. LEXIS 8350.

Complainant seeks to distinguish the unique nature of its current claim and its tardy filing on the grounds of its discovery of new evidence, including the discovery of an unsigned client application and the discovery of five forged signatures in a Corporate Resolution Form. Complainant previously based its allegations on the presence of forged signature(s) on a form seeking transfer of assets, and the absence of pertinent signed documents. *See Krause v. Forex Exchange Market, Inc., supra.* Complainant's alleged discovery of additional factual evidence is of little concern in any event since the Federal District Court dismissal was based on the grounds that the CEA did not apply to the transactions in question regardless of the available evidence.

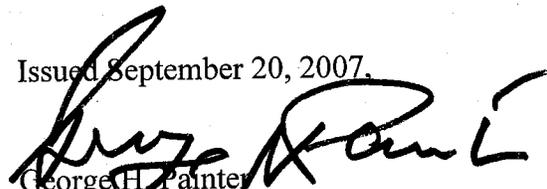
This Court will not review the Federal District Court's determination that the CEA does not provide subject matter jurisdiction over claims based on off-exchange foreign currency transactions. Complainant's sole opportunity to question it was on appeal. This Court does not have authority to relieve Complainant of the federal court's jurisdictional holding.

Copernic's pursuit of this matter under a variety of theories in a number of other courts, using essentially the same evidence, does not relieve Complainant of the burden of filing within the two year statutory limitations period for reparations claims. CEA Section 14(a)(1), 7 U.S.C. § 18(a)(1). Rather than tolling the Statute, the prior claims operate as a bar to the present action. Both prior decisions reflect that Complainant's claims have been considered on the merits and rejected, with *res judicata* effect on the current reparations proceeding.

Respondent's Motion to Dismiss the Complaint is GRANTED and the proceeding is DISMISSED WITH PREJUDICE.

So ordered.

Issued September 20, 2007.



George H. Painter
Administrative Law Judge