

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 02-22361

JUDITH E. HERSKOWITZ,

Plaintiff,

vs.

STEVEN DELIBERT, SUSAN CHARNEY,  
KAREN E. BEZNER, KAREN E. BEZNER  
as Trustee for North Jersey Trading Corporation,  
Hon. ALAN R. SCHWARTZ, Hon. MELVIA  
B. GREEN and Hon. MARIO P. GODERICH,  
Judges of the District Court of Appeal of Florida  
Third District,

Defendants.

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**COMPLAINT**

Plaintiff JUDITH HERSKOWITZ sues Defendants and alleges as follows:

1. This is an action for (1) damages pursuant to Title 42 U.S. Code §1983 and §1985 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999 (1971) for violation of civil rights guaranteed under the First, Fifth, Seventh, Ninth, Thirteenth and Fourteenth Amendments to the United States Constitution, and by the laws of United States; (2) for declaratory and injunctive relief; (3) civil conspiracy; (4) conversion; (5) waste, embezzlement and statutory larceny; (6) for Civil R.I.C.O., under 18 U.S.C. §1961, §1962 and §1964; (7) replevin of real property; (8) abuse of process; (9) intentional infliction of emotional and physical distress; and (10) rescission of contract.

**JURISDICTION AND VENUE**

2. The Court has jurisdiction of this cause under provisions of Title 28 U.S. Code, as particularly provided under Section 1331, federal question jurisdiction; Section 1337, commerce and

antitrust regulations; Section 1343, power of court to entertain civil rights cases; Section 2201 declaratory judgment jurisdiction; Section 2283 power of court to grant injunction to stay State court proceedings; Section 1332 power of the court to hear controversies between citizens of different states where the amount in controversy exceeds \$75,000.00 exclusive of interest and costs; and pendent claims authorized by F.R.Civ.P. 18(a) arising under the doctrine of pendent jurisdiction because the state law claims and federal claims arise out of a common nucleus of operative facts as set forth in United Mine Workers v. Gibbs 383 U.S. 715 (1966).

3. Venue is proper in this district under 28 USC 1391 because,

(a) a substantial part of the events or omissions giving rise to the claims herein asserted occurred in the Southern District of Florida;

(b) a substantial part of the property that is the subject of this action are located in this District;

(c) Defendants are subject to personal jurisdiction in this district at the time of commencement of this action; and

(d) it has been demonstrated that Plaintiff cannot get a full and fair hearing in the federal courts of New York and New Jersey.

4. Process may be served upon Defendants Charney, Delibert and Bezner pursuant to §48.193, Fla. Stat., because

(a) the cause of action arises out of tortious acts committed by Defendants personally and/or through their agents within the State of Florida; and

(b) Defendants personally and/or through their agents caused injury to Plaintiff within the State of Florida and/or were at the time of injury, engaged in substantial and not isolated activity in the State of Florida.

## PARTIES

5. Plaintiff JUDITH HERSKOWITZ, sometimes known as JUDY EVA HERSKOWITZ is a citizen of the State of Florida.

6. Defendant SUSAN CHARNEY (hereinafter referred to as “Charney”) is a citizen of the State of New York and at times appeared individually and/or purportedly on behalf of North Jersey Trading Corporation..

7. Defendant STEVEN DELIBERT (hereinafter referred to as “Delibert”) is a citizen of the State of New York. At all times material hereto defendant Delibert an attorney a single practioner, was licensed by the State of New York to practice law and appeared in various courts to represent his interests and that of Susan Charney individually and/or purportedly on behalf of North Jersey Trading Corporation.

8. Defendant KAREN E. BEZNER (hereinafter referred to as “Bezner”) is a citizen of the State of New Jersey. At all times material hereto Defendant Bezner an attorney was a single practioner, licensed by the State of New Jersey to practice law and was the court appointed trustee for North Jersey Trading Corporation and acted as attorney for herself as trustee in the New Jersey Bankruptcy Court proceedings.

9. Defendant Judge ALAN R. SCHWARTZ (hereinafter referred to as “Judge Schwartz”) is and all times material hereto was the Chief Judge of the District Court of Appeal of Florida, Third District and is a Defendant only for the purposes of declaratory and injunctive relief. Judge Schwartz was one of the judges on the three judge panel who presided in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997).

10. Defendant JUDGE MARIO P. GODERICH (hereinafter referred to as “Judge

Goderich”) is and all times material hereto was a Judge of the District Court of Appeal of Florida, Third District and is a Defendant only for the purposes of declaratory and injunctive relief. Judge Goderich was one of the judges on the three judge panel who presided in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997).

11. Defendant JUDGE MELVIA B. GREEN (hereinafter referred to as “Judge Green”) is and all times material hereto was a Judge of the District Court of Appeal of Florida, Third District and is a Defendant only for the purposes of declaratory and injunctive relief. Judge Green was one of the judges on the three judge panel who presided in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997).

### **GENERAL ALLEGATIONS**

12. On or around December 20, 1988 Charney, represented by her attorney Delibert, attempted to commence an action against Judith Herskowitz, xxx Herskowitz, xxx Herskowitz and Alex Fried in the Supreme Court, State of New York, County of New York<sup>1</sup> Index No. 24517/88, by purporting to serve them with motion papers in the form of an Order to Show Cause for Preliminary Injunction and Temporary Restraining Order.<sup>2</sup>

13. Among the “exhibits” attached to Charney’s motion was a Verified Complaint in which among others Charney alleged that, Judith Herskowitz her sons xxxx and xxxx Herskowitz and her

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<sup>1</sup> The Supreme Court is the lower State Court in New York the equivalent of the Circuit Court in Florida. The judges are addressed as “Justice”.

<sup>2</sup> Susan Charney (the Plaintiff) moved to restrain Alex Fried, Judith, xxxx and xxxx Herskowitz and North Jersey (named as the Defendants) from taking certain specified acts pertaining to the reorganization of North Jersey as Subchapter S corporation for tax purposes. Charney also filed a lis pendens against the real property of North Jersey.

father Alex Fried were the stockholders of North Jersey and that they did not recognize her to be a stockholder of North Jersey. Charney sought a judgment: to declare her to be an owner of forty shares of the 100 issued and outstanding stocks of North Jersey; to be awarded damages of three million dollars;<sup>3</sup> an injunction; to allow her to inspect the corporate books and records; and to appoint a receiver for the real property of North Jersey.

14. North Jersey Trading Corporation (hereinafter referred to as “North Jersey”) a closed New Jersey corporation, owned a 54 unit apartment building, in Manhattan on 92<sup>nd</sup> Street, at the address known as 200 Riverside Drive, New York City. The apartment building was the sole asset of North Jersey. It was purchased in 1958 by Alex Fried and his wife Hedy Fried. Hedy Fried died in 1981. The Frieds managed the building during their lifetime.

15. Pursuant to New York CPLR 304 in effect in 1988, both the action was commenced and jurisdiction was acquired by the service of summons. To pursue an action in the State of New York for declaratory judgment for ownership of stock, Charney was required to join all the shareholders as necessary parties<sup>4</sup> and personal jurisdiction was essential over each shareholder. To pursue an action on behalf of North Jersey, Charney had to be a stockholder.

16. In attempts to gain *in personam* jurisdiction over the North Jersey shareholders,

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<sup>3</sup> Charney was the estranged daughter of Alex Fried. Charney had an acrimonious relationship with Fried. She expressly documented in writing that she wanted nothing to do with Fried and wanted only his money. Nevertheless, Fried offered to make a financial provision for Charney but, instigated by Delibert, Charney rejected it as insufficient and they schemed to sue for “millions” on sham claims.

<sup>4</sup> All the shareholders in a closed corporation “who have a claim in the subject matter of action for a declaratory judgment or who may be effected by the result must be joined as necessary parties.” Sassower v. Himwich, 236 N.Y.S.2d 491 495 (Sup.Ct. N.Y. Co. 1962) aff’d, 19 A.D.2d 946 (N.Y. 1<sup>st</sup> Dept. 1963), where two shareholders in the closed corporation were not joined, the court ruled it “must refuse to grant such declaratory relief”.

Judith Herskowitz, xxxx Herskowitz, xxxx Herskowitz (hereinafter referred to as “the Herskowitzes”) and Alex Fried (hereinafter referred to as “Fried”) Charney falsely claimed under oath in her Verified Complaint that they were citizens of New York, when in fact both Charney and Delibert were fully aware that Fried and the Herskowitzes were domiciled in and were permanent residents of the State of Florida and not New York.

17. Each of the Herskowitzes and Fried filed a Motion to Dismiss Charney’s purported action on the ground of lack of personal jurisdiction and contested her attempted service because, it was made only with a Motion Preliminary Injunction and Temporary Restraining Order and not with the required summons; the attempted personal service and substituted ser-vice were deficient; and the Herskowitzes and Fried were not amenable to long arm jurisdiction of the New York court or to extra-territorial service of process because they had not committed any act or engaged in any activity in New York and had no legal relations with Charney which could be construed as subjecting them to the jurisdiction of the New York courts.

18. In January 1989, Charney moved to allow her to serve an Amended Complaint to correct her deficient pleading. Charney added a derivative suit on sham claims for multi million dollar damages on behalf of North Jersey, *personally* against the Herskowitzes.

19. By order dated March 8, 1989 Justice Jacqueline Silbermann denied the Motion for Preliminary Injunction and Temporary Restraining Order; set down the Herskowitzes’ and Fried’s Motion to Dismiss for an evidentiary hearing on the service of the Order to Show Cause; and made the service of the Amended Complaint subject to the outcome of the evidentiary hearing. In a March 29, 1990 order Justice Silbermann recognized that,

“Plaintiff’s [Charney’s] papers, at the best, state a claim for stock interest in a corporation which owns realty; such a claim does not constitute a proper basis for a lis pendens.”

20. In May 1989, an evidentiary hearing on the jurisdictional issues was commenced before Justice Phyllis Gangel Jacob. The hearing was conducted for four days, but was not completed. In a May 8, 1990 order Justice Silbermann directed to resume the evidentiary hearing on the service before Justice Gangel Jacob. Without resuming that evidentiary hearing, without notice to the Herskowitzes and without any stated reason Justice Gangel Jacob was removed from the case and it was reassigned to Justice Harold Tompkins.

21. In September 1990, Charney personally came to Dade County, Florida to institute incompetency proceedings in the Dade County Probate Court against the 87 year old Fried who became ill and was hospitalized. Charney acknowledged in her petition for incompetency that Fried was a “resident” of Dade County, Florida.<sup>5</sup> A guardian was appointed for Fried.

22. By motion dated January 18, 1991 Charney moved in the New York court for the appointment of a guardian ad litem for Fried based on the Florida determination of incompetency. In that same motion paper Charney attempted to dispense with the evidentiary hearing, also with the determination on the jurisdictional issues and sought to foreclose the Herskowitzes “from presenting any evidence in opposition to her claim to be stockholder of North Jersey” by moving for a judgment by default against the Herskowitzes for alleged failure to answer the Amended Complaint. The Herskowitzes opposed the motion among others on the ground, that no response to the Amended Complaint was due under prior court orders.

23. To take control of the real property of North Jersey, by motion dated February 7, 1991 Charney also moved for the appointment of a receiver. Because, the building was under rent control the rents were artificially low. To increase income, a number of apartments were kept vacant with a plan initially by Fried, to co-op or to refurbish them to rent at “market”. Charney

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<sup>5</sup> Under §744.201 Fla.Stat. that Fried was a resident, was the equivalent that he was a Florida “domiciliary”.

called this mismanagement and diversion of income, on which to appoint a receiver.

24. In a decision dated April 9, 1991 Justice Tompkins “declined to grant a default judgment” upon finding no ground for a default and expressly noted that the Herskowitzes had a legitimate and an “evident dispute with plaintiff [Charney] on the underlying facts”. Justice Tompkins without holding an evidentiary hearing on the disputed issues of the service and without making a determination on long arm jurisdiction merely directed the Herskowitz

“defendants, with the exception of defendant Alexander Fried, to answer within 30 days after service of a copy of this order with notice of entry.”

25. Without a determination on whether Charney was a shareholder and without an evidentiary hearing on the disputed claim of mismanagement and misuse of corporate funds, in that same April 9, 1991 decision Justice Tompkins summarily appointed attorney Paul Windels III as temporary receiver for the real property of North Jersey and as guardian ad litem for Fried. An order settling the April 9<sup>th</sup> decision was entered on May 21, 1991.

26. In a Stipulation entered into on June 26, 1991 between Delibert and Stephen King, New York attorney for the Herskowitzes, it was expressly clarified and agreed upon that the May 21, 1991 order directing the Herskowitzes to “answer” did not limit them to “answer” Charney’s Amended Complaint, but, they could “move” that is with a Motion to Dismiss.<sup>6</sup>

27. On July 2, 1991 the Herskowitzes then filed a Motion to Dismiss, addressed to the Amended Complaint raising their ongoing defense of lack of personal jurisdiction. They objected to the insufficiency of the service and demonstrated that neither Fried nor the Herskowitzes had any contact with the State of New York or with Charney on which long arm jurisdiction could be based.

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<sup>6</sup> Under N.Y. CPLR 3211(e) defenses may be raised by motion before service of a responsive pleading on one or more grounds set forth in subdivision (a) one of which is subdivision (8) the court has no jurisdiction of the person of the defendant.

Supported with well settled authorities the Herskowitzes argued that even if Charney could execute a technically correct service she would be still facing the same problem of lack of long arm jurisdiction over all the North Jersey shareholders.

28. Charney's response to the Motion to Dismiss was supported with Delibert's affirmation dated August 1, 1991 in which Delibert acknowledged under penalty of perjury that the Herskowitzes' initial Motion to Dismiss was never ruled on the merits and that he did enter into the June 26, 1991 stipulation with counsel for the Herskowitzes saying as follows:

"An order was entered on May 21, 1991 (Exhibit E), and Notice of Entry directed to all parties; at the request of new counsel for defendants, plaintiff extended their time "to answer or to move" until July 3, 1991." (Emph. added)

29. Charney repeatedly acknowledged in Delibert's subsequent affirmations and memoranda of law that, personal jurisdiction over the Herskowitzes was not yet determined. Charney conceded that the extraterritorial service on xxx Herskowitz was invalid and that the New York court did not have long arm jurisdiction over him. Charney claimed that a ruling on the Motion to Dismiss was premature before she conducts discovery on jurisdiction and moved for leave to file an amended complaint to state facts for long arm jurisdiction.

30. Justice Tompkins then dispensed with the evidentiary hearing on the service and with the required determination on personal jurisdiction by simply fictionalizing the facts of a prior May 8, 1990 order. Justice Tompkins falsely asserted in his October 2, 1991 order that the Herskowitzes withdrew their jurisdictional defenses before a predecessor judge, and prohibited the Herskowitzes from raising the jurisdictional issues saying as follows:

"The extensive prior history of the numerous prior motions have given the Court familiarity with the action. North Jersey and the defendant Fried and the Herskowitz defendants have repeatedly raised and reraised the issue of jurisdiction in spite of Justice Silbermann's order of May 8, 1990 which permitted the withdrawal of the jurisdictional claim. North Jersey, defendant Fried and the Herskowitz defendants may not re-raise the jurisdictional issue."

31. Under the false pretext that the Motion to Dismiss was a reargument of the May 8, 1990 order, Justice Tompkins declined to rule on the Herskowitzes' Motion to Dismiss and denied Charney's Motion for Discovery and To Amend the Complaint because it was "moot".

32. In a Motion to Reargue filed on November 27, 1991 the Herskowitzes have shown that the October 2, 1991 order was unsupported by the record because: there was no ruling in that May 8, 1990 order on any withdrawal of jurisdictional objections; the Herskowitzes have withdrawn only an April 19, 1989 Motion to Reargue in which they objected to a March 8, 1989 order scheduling for March 21, 1989 an evidentiary hearing on the service, because of the added expense to travel from Florida in the holiday season; since that hearing was rescheduled and was commenced on May 12, 1989; so the issue became moot and in an April 9, 1990 letter the Herskowitzes asked permission to withdraw the motion. Thereupon, Justice Silbermann ruled in her May 8, 1990 order only that "this court grants their written application and permits their motion to be withdrawn" and directed to resume the hearing on the service as follows:

"The court sets those parts of the motions which relate to service of the Orders to Show Cause on all defendants down for a traverse [evidentiary] hearing."

Without any hearing and without making any ruling on the Motions to Reargue Justice Tompkins instructed a deputy clerk to mail back to the Herskowitzes their motion papers.

33. Then without serving a motion and without notice and hearing to the Herskowitzes, on Delibert's *ex parte* communications Justice Tompkins issued an *ex parte* order on December 10, 1991 sanctioning and imposing a fine of \$5,000.00 on the Herskowitzes in retaliation for exercising their constitutional right to object to jurisdiction. Justice Tompkins justified the sanctions because, the Herskowitzes with their "motions for dismissal based on jurisdictional arguments" were impeding the case from reaching the merits and were delaying it.

34. Charney then purported to proceed on the merits of her case with a Motion for Partial Summary Judgment dated December 12, 1991 seeking to be declared the owner of (20) twenty shares of North Jersey. Without receding from their position that the New York Court lacked jurisdiction over their persons, the Herskowitzes, opposed the motion with an affidavit stating, that Charney's claim was based on a purported promise of a gift of stocks by the Frieds, which was a claim against the Frieds and not against the Herskowitzes; that although the guardian ad litem Paul Windels III never qualified and did not represent Fried, the record was replete with Fried's denial of the alleged gift of stocks; and that Charney's claim was unsupported by the corporate records of North Jersey, of which they submitted copies.

35. Although, the Herskowitzes' final response to Charney's motion was received by the court as was directed by Justice Tompkins by March 3, 1992, he again refused to take their papers into consideration. Justice Tompkins granted Charney's motion on the disputed issues of fact, without an opportunity for the Herskowitzes to be heard in any hearing evidentiary or otherwise and issued an *ex parte* order dated March 5, 1992 on the pretext that Charney's motion was un rebutted, because the Herskowitzes' papers were not received by the court.

36. However, upon finding that the Herskowitzes' opposition papers were received by the court on March 3, 1992 Justice Tompkins acknowledged in his March 6, 1992 order that he did have the Herskowitzes' papers on March 5, 1992 the day he entered his March 5, 1992 decision granting Charney's motion. But, then in his June 3, 1992 order, Justice Tompkins claimed that the Herskowitzes' papers were merely a "reargument" of his March 5, 1992 order and so he refused to take their papers into consideration, without regard, that the papers were received by the court prior to the March 5, 1992 order.

37. Alex Fried died on March 25, 1992, in Miami-Dade County, Florida. Alex Fried

disinherited Charney. Charney never contested his Will. No party was substituted and no one qualified to act in place and stead of Fried in the New York Supreme Court case.

38. By decision dated June 23, 1992 the Herskowitzes were denied their constitutional right to appeal from the October 2, 1991 order of Justice Tompkins with its fictionalized ruling, that the Herskowitzes withdrew their objections to personal jurisdiction. The New York Appellate Division, First Department dismissed the appeal on the pretext that the October 2, 1991 order was not appealable because, the Motion to Dismiss was deemed by the lower court to be a motion for reargument and under New York law no appeal lies from an order denying a motion for reargument. However, since there was no May 8, 1990 order allowing the Herskowitzes to withdraw their jurisdictional objections, there was no order to appeal from.

39. In yet further attempts to confiscate the real property of North Jersey, on September 18, 1992 on Charney's motion, Justice Tompkins issued an order compelling the Herskowitzes to turnover to the Sheriff of the City of New York "within 20 days after service of copy of the order with notice of entry" all of their North Jersey stock certificates "in aid of satisfaction" of a prior \$5,000.00 fine, which Charney reduced to judgment. Disregarded was the fact that their North Jersey shares had a value far in excess of \$5,000.00.<sup>7</sup>

40. In that same September 18, 1992 order Justice Tompkins granted Charney's motion to strike the Herskowitzes' pleadings, unless they "appear and submit to depositions commencing on October 29, 1992, 9:30 A.M. at the Supreme Court, 60 Centre Street, Room 252, New York, New York" the courtroom of Justice Tompkins. That October 29, 1992 day of deposition was but, a few days following the day when the North Jersey shares were required to be turned over to the Sheriff

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<sup>7</sup> N.Y. CPLR 5225(a) provides that a judgment debtor can be compelled to turn over only so much of his property "as is sufficient to satisfy the judgment."

under the September 18<sup>th</sup> order. The Herskowitzes' objections that as out of state defendants they cannot be forced to travel for a deposition to a distant forum was rejected. It was evident that the deposition was a ploy to force the Herskowitzes into the New York court's jurisdiction, to confiscate all their North Jersey stocks without allowing them any defense, including on the threshold issue of jurisdiction.

41. After effectively barring the Herskowitzes from appearing for their deposition with the aforementioned orders, Delibert on behalf of Charney procured from Justice Tompkins an order dated January 19, 1993 holding the Herskowitzes in contempt of court for failure to appear for their deposition. Delibert was awarded the sum of \$23,500.00 for alleged counsel fees and expenses, jointly and severally against all the Herskowitzes to be paid on or before February 4, 1993. The order further provided that if the \$23,500.00 were not paid as directed, then on Charney's *ex parte* application an order would be entered to arrest and to incarcerate the Herskowitzes until compliance with the order.

42. Charney procured from Justice Tompkins a further order dated January 19, 1993 striking the Herskowitzes' pleadings for failure to appear for their deposition. Then, without any opportunity to be heard at any hearing evidentiary or otherwise and without any further proof, Charney was declared to be the owner of yet another 20 shares of stock, for a total 40 shares of the 100 issued and outstanding shares of common stock of North Jersey. In that same January 19<sup>th</sup> order the Herskowitzes were also denied any defense on the issue of liability in Charney's derivative suit. The case was then set down for a hearing before a referee, but only on the amount of the damages, which was yet to be concocted by Charney and Delibert.

43. On January 19, 1993 Justice Tompkins issued a further order holding the Herskowitzes in contempt of court, for not delivering their North Jersey stock certificates to the Sheriff and

awarded a fee of \$7,000.00 to Delibert jointly and severally against the Herskowitzes. The order provided that the Herskowitzes may purge themselves of the fine by turning over their North Jersey stock certificates to the Sheriff on or before February 4, 1993. In the event of failure of compliance, the order provided for an *ex parte* application,

“for an order of commitment directing the Sheriff of the City of New York or the sheriff of any county within the state wherein the Petitioners, may be apprehended, commanding him forthwith to arrest the said Petitioners, JUDITH HERSKOWITZ, xxx HERSKOWITZ and xxxx HERSKOWITZ, to be brought before IAS Part 13 of this Court during the time when such part is in session, to be committed until they shall purge their contempt by complying with the Order of this Court entered the 21<sup>st</sup> day of September, 1992, by turning over to the Sheriff of the City of New York the shares of stock....” (Emphasis supplied)

44. On February 19, 1993, Justice Tompkins issued an *ex parte* Order of Commitment, directing the Sheriff to arrest the Herskowitzes and to bring them before him for their alleged failure to purge themselves by paying the fine of \$7,000.00 and by delivering all their North Jersey stock certificates to the Sheriff. Yet another *ex parte* Order of Commitment of the same date was entered by Justice Tompkins for the arrest of the Herskowitzes for their alleged failure to pay the \$23,500.00 fine imposed on them by the January 19, 1993 order.

45. With these schemes, to seize their North Jersey stocks certificates and warrants of arrest to incarcerate them, the Herskowitzes were effectively barred from participating in the hearing on Charney’s derivative suit, to testify and to offer evidence against her fabricated damages, masterminded by Delibert. The Referee noted in his March 22, 1993 Report that his recommendation was based on Charney’s unopposed claims.

46. Because of the detrimental effect that Charney’s then five years of litigation had on North Jersey with her false claims for corporate shares and fabricated derivative suit, in March 1993, North Jersey filed a voluntary petition for relief under Chapter 11 in the United States

Bankruptcy Court in Trenton New Jersey, Case No. 93-31620.

47. In May 1993, also represented by Delibert, Charney filed in the Bankruptcy Court a Motion for Relief from Automatic Stay and for Appointment of Trustee. Charney sought permission to continue her New York derivative suit on behalf of North Jersey to enter judgments against the Herskowitzes. Charney also sought the appointment of a trustee based on her fabricated claims of mismanagement of the real property of North Jersey in her New York derivative suit, to which the Herskowitzes were denied a defense.

48. North Jersey represented by Bruce Levitt, objected to Charney's motion on the ground that she had no standing and the New York proceedings were a nullity because, no determination on the merits was made on jurisdiction over the Herskowitzes or on any other issues. Bankruptcy Judge Stephen Stripp refused to consider and to rule on those objections. Acting in concert with Delibert, Judge Stripp was eager to rely on the New York derivative suit as a pretext for appointing a trustee to confiscate the valuable real property of North Jersey.

49. By order issued on October 12, 1993 Judge Stripp granted Charney's motion and appointed Bezner as trustee, ousting North Jersey as debtor in possession. Bezner was appointed not only as trustee, but for a double dipping of fees, also as attorney for herself as trustee. By order issued on October 27, 1993, Judge Stripp granted Charney relief from automatic stay.

50. In flagrant violation of the right to due process protected under the Fourteenth Amendment, without ever according the Herskowitzes a full and fair or any opportunity to litigate the New York court's jurisdiction over their person or any of the other issues, Justice Tompkins entered judgments by default against the Herskowitzes in Charney's New York derivative suit. This denial of due process was made all the more egregious, by the imposition of sanctions on the Herskowitzes in retaliation for exercising their right to object to jurisdiction.

51. On November 22, 1993 Justice Tompkins entered a default judgment against xxx and xxx Herskowitz in the sum of \$4,251,947.87 and on January 21, 1994 entered the same default judgment against Judith Herskowitz in the sum of \$4,300.024.42, without jurisdiction over the Herskowitzes. Although the judgments bear different dates, they were entered in the same derivative suit;<sup>8</sup> were jointly and severally against Judith, xxx and xxx Herskowitz and were based on the same alleged damages contrived by Charney and Delibert.<sup>9</sup>

52. On December 29, 1993 Delibert appeared in the Bankruptcy Court in Dade County, Florida to testify<sup>10</sup> in the case of Judith Herskowitz (dismissed at a later date) and conceded under

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<sup>8</sup> The judgments were entered on different dates because, of a bankruptcy court stay. The difference in the judgments was due to additional interest between November 22, 1993 and January 21, 1994, interest of, \$987,919.54 against xxx and xxx Herskowitz and \$1,035,761.00 against Judith on the identical principle amount of \$2,104,963.33; \$960,000 and \$200,000.

<sup>9</sup> The damage was an alleged loss of rental income by North Jersey from January 1985 to February 1993, fabricated by Delibert in the sum of \$2,104,963.33. Included was the loss of income on apartments kept vacant to co-op or to refurbish to rent at market, which was obstructed since 1988 by Charney's litigation! Disregarded was, that all the income belonged to Fried, it was his livelihood, that Charney was never entitled to, never received any income or any accounting and never worked for North Jersey. The only expenses against the gross rental income were the city property taxes, utility bills, mortgage payments, and salary for one superintendent. Omitted was the income received by Fried; also expenses i.e. corporate taxes, legal and accounting fees, telephone, the loss of income on tenants who skipped payment and the capitol improvements i.e. windows, a new boiler, etc. Delibert then added on \$960,000,00 as penalty plus interest. So, the Herskowitzes were made responsible for the support of Fried, for the expenses of North Jersey and for the lost income on apartments kept vacant by Fried.

<sup>10</sup> "Q.....is there any document that you have knowledge of where the defendants Judith Herskowitz, xxxx Herskowitz, xxxt Herskowitz and Alex Fried withdrew their jurisdictional objections in the New York court?

A. In so many words, I don't believe so.

Q. You do not have any such document?

A. I don't believe there is such a document in so many words."

Q. I am asking you if there is any such document wherein these parties withdrew their jurisdictional objections. The same parties as above.

A. I know of no document stating an expressed withdrawal of the objections."

oath that Judge Tompkins' ruling in his October 2, 1991 order that, the Herskowitzes withdrew their objections to personal jurisdiction was unsupported by the record.

53. About the same time in December 1993 and the beginning of 1994 Charney recorded in the Eleventh Judicial Circuit Court for Miami-Dade County, Florida, her New York judgments for domestication to enforce those judgments against the Herskowitzes, Case No(s). 93-22064, 94-669 and' 94-3614. The Herskowitzes filed actions challenging the New York judgments for lack of personal jurisdiction, Case No(s) 94-472, 94-2887 and 94-5714.

54. In a letter dated February 17, 1994 supported with extensive documents, Judith Herskowitz brought to the attention of Bezner the history of Charney's New York litigation, evidencing that Charney's New York case including the derivative suit was founded on baseless, false claims. Bezner was urged to examine the facts and the documents. However, Bezner's interest was not to keep North Jersey as a going concern, but to liquidate its real property to turn it into a cash cow for her maximum fees and other personal benefits.

55. Almost immediately following her appointment as trustee, Bezner sought buyers for the real property of North Jersey. The building being in the upscale neighborhood on the West Side of New York City, facing Riverside Drive was easily marketable. On January 18, 1994 Bezner executed a contract of sale for 1.9 million dollars with an Abe Haruvi and on March 4, 1994 she filed a Motion for Private Sale of the North Jersey Property.

56. In addition to paying the obligations of North Jersey, Bezner noted in her Motion for Private Sale, substantial "administrative expenses" to be incurred on the sale, among others a commission of 6% on the gross sale price in the sum of \$114,000.00 for the real estate broker she retained; fees and costs for the attorneys she retained to assist her on the sale; accounting fees; attorney fees and costs for herself; and

“in addition, your Trustee will seek a commission upon sale of the property and distribution of the proceeds of sale in the amount not to exceed 3% of the total amount so distributed.”

57. North Jersey vigorously opposed the proposed sale. Bruce Levitt the attorney for North Jersey had already negotiated the claims of creditors, many for less than the amount claimed. The Herskowitzes retained an architect and secured the services of other professionals to testify on the cost of repairs, which Bezner asserted had to be done to rent the vacant apartments. The Herskowitzes also secured a commitment for refinancing and North Jersey filed a plan of reorganization.

58. Charney through Delibert proposed no plan of reorganization but, sought to purchase the North Jersey property for themselves. To raise funds among others, they pursued the Herskowitzes to collect on the void New York derivative judgments. They moved to require the Herskowitzes to deliver all their North Jersey stock certificates to Bezner as trustee. They sought to appropriate a subscription agreement for the right to purchase a New York apartment as a co-op, left for the Herskowitzes by the late Alex Fried. Without notice and hearing, Charney procured in the Dade County Circuit Court an *ex parte* order from Judge Arthur Rothenberg, enjoining Judith Herskowitz from collecting the sum \$80,000.00 deposited with the court for payment on her judgment of divorce by the estate of her late husband.

59. Not only did Bezner fail and refuse to propose a plan of reorganization for North Jersey, but, she vigorously obstructed and objected to North Jersey’s plan of reorganization. While on the one hand Bezner supported her motion to liquidate North Jersey’s sole asset the real property, with claims that it was a “wasting asset” because of the need for repairs and insufficient income, on the other hand Bezner obstructed the Herskowitzes’ attempt to make sufficient repairs to rent the vacant apartments under provisions of the New York Rent Stabilization Law and to increase North Jersey’s

income.

60. Bezner's stated goal was to increase the marketability of the building, by continuing to warehouse over twenty vacant apartments out of the fifty four, which made the property highly desirable. Bezner maintained that these apartments should not be rented for the amount established under provisions of the New York Rent Stabilization Law but, at "market". Bezner projected an exorbitant sum of \$200,000.00 to one million as the cost of refurbishing each of the vacant apartments to bring up to "market" without any evidence of the actual cost. Bezner declared that since North Jersey could not raise these funds the real property should be sold.

61. Bezner refused to release funds even for a \$10,000.00 commitment fee to finance North Jersey's plan of reorganization, and declared in her June 17, 1994 objections as follows: "I steadfastly refuse to release the sum of \$10,000.000 from this estate, unless ordered to do so by the Court."

62. At the same time on July 1, 1994, Bezner as attorney for herself as trustee, promptly submitted her first petition for fees for \$41,000.00 covering a period of less than eight months. Bezner also retained professionals i.e. the accountants Bederson & Co. with whom she communicated regularly as trustee and as attorney for trustee, creating multiple billings.

63. North Jersey's initial plan of reorganization supported with a commitment of \$850,000.00 was attacked by Bezner as insufficient. The Herskowitzes then secured a commitment for North Jersey in the sum of \$1.1 million dollars from Argo Corporation a sum shown to be sufficient for payment of claims and for repairs. Bezner then attacked Argo Corporation and its officers the Moscovitzes, serving them with subpoenas demanding that they produce documents not only of their corporate finances, but of their personal finances as well. The Moscovitzes took the position that since Argo had sufficient funds, their personal finances had no bearing on Argo's

ability to make the loan and so they withdrew their commitment.

64. Bezner then immediately, gleefully moved at the August 3, 1994 hearing to confirm termination of financing and to reassert her scheme to liquidate the North Jersey property. At that same hearing Charney moved for further relief from automatic stay on the derivative suit. Judge Stripp again refused to hear Judith Herskowitz that there was no basis for Charney's claim because, the New York orders declaring Charney a 40% shareholder of North Jersey and her four million dollar derivative judgment were void for lack of personal jurisdiction ab initio and that Bezner's appointment as trustee rested on these void proceedings.

65. Judge Stripp threatened Judith Herskowitz, an interested party as a shareholder, with removal from court, Judge Stripp declaring that any argument on these issues was useless because he had already decided not to hear it, and that his main concern was that,

“Now, we get to the most interesting part of today's proceedings, Ms. Bezner's cross motion for leave to renew her efforts to sell.”

66. Bruce Levitt, attorney for North Jersey stated at that August 3, 1994 hearing that Bezner made it impossible to proceed with a plan of reorganization. Acting in concert and in aid of Bezner's objectives to liquidate the North Jersey real property Judge Stripp steadfastly maintained that the Herskowitzes “will not get back into the building”. Bezner then eagerly relied on the void New York orders to bar the Herskowitzes from the building because, as she said “there is a warrant of arrest if they show up in mid-town Manhattan”.

67. Bezner continued to insist on keeping the over twenty apartments vacant, because as she said if they were rented they would “ruin the marketability of the building”.

68. Although, North Jersey did not recognize Charney's void New York judgments, the Herskowitzes attempted to settle with Delibert to eliminate the obstacles put in by Charney with her

false claims. Delibert demanded an immediate payment of \$350,000.00 in cash.

69. Judge Stripp, declined to hear and to consider the new financing raised by the Herskowitzes for 1.6 million dollars or more, sufficient to fund the plan of reorganization and to meet Delibert's demands. Judge Stripp also declined to hear the expert witnesses who appeared on behalf of North Jersey to testify on their professional estimates for the cost of repairs showing that it was well within North Jersey's ability to obtain financing.

70. Without a prior appraisal of the North Jersey real property, Judge Stripp simply decided that the purchaser would have to meet an "upset price in excess of \$2,100,000"<sup>11</sup> which he arrived at by a rough estimate of the funds to pay claims of creditors, the New York City Transfer Tax, capitol gains taxes and the administrative expenses. Judge Stripp disregarded the argument of Levitt the attorney for North Jersey, that for every dollar of the 2.1 million upset price 50 to 60 cents would go for taxes and administrative expenses and that this would not be the case if North Jersey were allowed to reorganize and its property were not sold.

71. To oppress, to demean and to oust the Herskowitzes Judge Stripp and Bezner repeatedly relied on the false presumption that even if the Herskowitzes had an interest in the North Jersey property, it would be wiped out with the four million dollar New York judgments. To Judith

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<sup>11</sup> Unlike the typical single asset real estate case where the property is over encumbered the North Jersey property had a value far in excess of the liens and claims of the secured and unsecured creditors. Judge Stripp with his most generous calculation came up with the estimated sum of \$1,065,000 as payment *dollar for dollar* of all claims, liens, taxes and fees. Judge Stripp then calculated \$750,000 for capitol gain taxes and the N.Y. State Cuomo tax, \$114,000 for real estate broker's commission, \$57,000 for Bezner as trustee's commission, \$35,000 for Bezner's fees as attorney, \$13,000 for the attorney retained by Bezner for the sale; \$51,000 for the attorney of North Jersey and additional fees for Bezner. (A sum well in excess of a million dollars which would not have been incurred except for Bezner's sale, for unjust personal enrichment.) It is noteworthy that when Charney purported to commence her lawsuit in 1988 the North Jersey real property was encumbered with a mortgage of about \$200,000.

Herskowitz's plea that the judgments in the least should be settled with Charney and the property should not be sold, Judge Stripp retaliated by forcing Judith Herskowitz to leave the courtroom.

72. Following that Judge Stripp set down the financial arrangement on the sale without requiring any proof of the ability of the purchaser to pay saying as follows:

“Anybody who's willing to put 10 percent in cash, at the risk of losing it, unless they close on very strict terms, seems to me has demonstrated prima facie, their financial ability to go forward.”

73. After Judith Herskowitz was ejected from the hearing, she went to the clerk's office to review court files. She requested help from a deputy clerk to find cases in which Bezner was acting as attorney and/or trustee. Then Bezner happened to come into the clerk's office. Upon realizing that it was the files in which she was involved in, that Judith Herskowitz was looking at, Bezner became visibly upset, and instructed the clerk not to give her the files.

74. By order entered on August 5, 1994 Judge Stripp granted Charney Additional Relief from Automatic Stay. The New York derivative judgments were deemed to be an asset of North Jersey under control of Bezner as trustee. Judge Stripp authorized Charney to proceed with collection and enforcement of the New York derivative judgments in the State of Florida and in other jurisdiction as agent of trustee Bezner and directed that any proceeds collected by Charney “shall be forthwith delivered to the Trustee [Bezner] named and appointed herein”. Charney then continued with the domestication of the New York judgments in the Dade County Circuit Court, which was previously stayed because of the automatic bankruptcy court stay.

75. On August 12, 1994 Judge Stripp entered an “Order Authorizing Trustee To Renew Motion For Leave To Sell Real Property” setting it down for hearing on August 31, 1994. Although, the August 31, 1994 hearing was noticed only to renew Bezner's Motion to Sell and not for the sale of the real property, Judge Stripp was determined to proceed with the sale and refused to hear any

alternative to the sale suggested by Bruce Levitt attorney for North Jersey. Judge Stripp again failed and refused to hear that North Jersey was able and ready to proceed with a plan of reorganization, with a commitment for refinancing of 1.6 million dollars, or more secured from a reputable New York investment banker.

76. Judge Stripp again failed and refused to hear Judith Herskowitz on the issue that Bezner's appointment as trustee based on Charney's proceedings in her New York derivative suit, could not be valid inasmuch as, the New York court failed to acquire personal jurisdiction over the Herskowitzes. Judge Stripp responded that he made his decision without allowing any argument on these issues and he again threatened to oust Judith Herskowitz,

“Mrs. Herskowitz, when you were here last, you had to leave the courtroom. That possibility looms very large once again today.”

77. Judge Stripp also denied North Jersey's request for a stay of the sale pending appeal. The sale proceeded in face of North Jersey's un rebutted ability to procure financing for its plan of reorganization. Charney and Delibert supported trustee's sale and Ms. Bezner was in agreement with them that the surplus funds would be transferred to the New York receiver.

78. Ms. Bezner commenced the sale, by announcing that there were six parties to bid for the North Jersey property. Each of these parties was anxious to purchase the North Jersey real property. While Judith Herskowitz sat there silently in shock, Judge Stripp attacked and rebuked her, “I am not going to have you sitting there weeping through this, Mrs. Herskowitz, I'm sorry”. Thereupon, to assure that the sale would go smoothly as planned, Judge Stripp arrogantly dictated, “I want you out in the hallway.” Judge Stripp then instructed his bailiffs to remove Judith Herskowitz from the courtroom.

79. Pursuant to the transcript of the August 31, 1994 hearing, when Robert Herskowitz

objected to the sale, Judge Stripp also threatened him with removal from the courtroom. The real property of North Jersey was sold to Sam Domb and Ulo Barad as the highest bidders for \$2,925,000.00. The condition laid down by Judge Stripp was that if the purchasers did not make full payment within 10 days of the sale their deposit of \$300,000.00 would be forfeited. 80. An argument ensued that the 10<sup>th</sup> day falls on a Saturday, which was not acceptable to Levinson, attorney for Domb and Barad. Bezner requested that the purchasers be given till Monday the 12<sup>th</sup> of September. So, Judge Stripp set down the 12<sup>th</sup> as the deadline in his August 31, 1994 Order Authorizing Sale of Real Property by Trustee to Sam Domb and Ulo Barad.

81. North Jersey appealed the August 31, 1994 order and sought an immediate stay from the District Court. The Order to Show Cause seeking a stay was set down for September 9, 1994 at 11:30 A.M. before Judge Clarkson S. Fisher. At the commencement of that hearing, Bezner surprised the Herskowitzes by serving a letter, in which she claimed that she had closed on the North Jersey real property at 2:00 A.M. in morning of that September 9th. Without producing any of the alleged closing papers, Bezner then asserted that the appeal was mooted because the closing on the sale was completed and the stay should be denied.

82. By permission of Judge Fisher North Jersey conducted discovery. Bruce Levitt attorney for North Jersey uncovered that Bezner's closing by burning the midnight oil, was deceptive. Domb and Barad never delivered the balance of the purchase price to Bezner, yet their \$300,000.00 deposit was not forfeited as directed in the August 31, 1994 order. Although Domb and Barad never paid the balance of the purchase price Bezner gave to Tomer Realty (assignee of Domb and Barad) a deed dated September 8, 1994 for the North Jersey property. 83. Without any further notice of the sale, the real property of North Jersey was then sold to J.D. Realty who reimbursed Tomer Realty for the \$300,000.00 and paid the balance of the purchase price in the sum

of \$2,625,000.00 with a check dated September 9, 1994 payable directly to Bezner as trustee. A deed dated September 9, 1994 was then given by Tomer Realty to J.D. Realty. By failing to renounce the sale, Bezner again intentionally deprived North Jersey of the opportunity to proceed with its plan of reorganization, and once more frustrated the objectives of Chapter 11.

84. By order dated September 29, 1994 Judge Stripp rewarded Bezner on her first fee application with \$31,000.00 in counsel fees and \$5,718.03 in expenses covering a period of less than eight months, from November 1993 to June 26, 1994. Judge Stripp awarded an additional fee of \$13,330.00 to Rothman & Stein, the attorneys retained by Bezner for the closing. Bezner's so-called legal services consisted of make work at \$200.00 an hour, for defeating opposition to the sale, for reading letters and papers, talking to lawyers and the professionals she retained. For a double dipping Bezner also noted trustee's fees for herself to be applied for at a future date. The objections to Bezner's counsel fees was overruled by Judge Stripp.

85. Bruce Levitt, the attorney for North Jersey, was awarded a fee of \$7,194.08 and expenses of \$2,805.92 to be paid from the \$10,000.00 plus \$1,000.00 for expenses, advanced to North Jersey from funds borrowed by Judith Herskowitz from third parties to retain counsel for North Jersey. In retaliation for objecting to the sale of the North Jersey real property, Judge Stripp denied reimbursement of the retainer fee to Judith Herskowitz.

86. By order dated November 7, 1994 Judge Fisher denied the appeal in the New Jersey District Court on the ground, that the appeal was mooted by the completion of the sale prior to the September 9, 1994 hearing, based on the fictionalized view that "in exchange for the full purchase price, the Trustee delivered the deed to Tomer Realty" the assignee of Domb, Barad, when as supported by the record, the deed was delivered to them before payment of the full purchase price, which they never paid. North Jersey filed an appeal to the United States Court of Appeals for the

Third Circuit.

87. In a motion dated January 4, 1995 Delibert sought fees on the basis that Charney was an interested party, having been “adjudicated to own 40% of the outstanding stock by final judgment of the Supreme Court of the State of New York”. Delibert claimed he was entitled to fees because, of a “substantial contribution” to the estate of North Jersey because, it was on “Charney’s successful original motion” that the trustee was appointed on the “misconduct” of the Herskowitzes in Charney’s New York derivative suit. Delibert claimed his fee in the bankruptcy case was \$60,000.00 but, acknowledged that much of it was for the personal benefit of Charney and so he was seeking “only” \$21,597.20 in fees and \$3,096.95 in expenses.<sup>12</sup>

88. Judge Stripp continued to prohibit any questioning and any attack on Charney’s New York judgments for lack of jurisdiction. At the January 17, 1995 hearing Judge Stripp again rebuked Judith Herskowitz saying:

“I don’t want to hear anything about the validity of that judgment”.

89. To further intimidate and terrorize the Herskowitzes Bezner jubilantly reiterated, that there was a warrant outstanding against the Herskowitzes in Charney’s New York case. Not to be left out, Delibert assured the court that a warrant was issued by “Justice Tompkins of the Supreme Court of New York in our shareholder’s derivative action for contempt of court” and “it remains

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<sup>12</sup> Delibert noted the extensive litigation he pursued against the Herskowitzes generating fees for himself and others, which he claimed he billed to Charney. He stated that he “excluded” any services and disbursements of other litigation he conducted between Charney and the Herskowitzes in three states for the past six of years, from 1988 to 1994 (at the time), for which he has

“recorded over 3250 hours of attorney’s time....even at the reduced rate of \$170.00 per hour which I agreed to charge Charney at the outset hereof, that aggregates more than \$550,000.00 in attorney’s fees and I have incurred \$54,734.69 in expenses”.

outstanding”. Although Judge Stripp had no jurisdiction to enforce in New Jersey a New York State Court arrest warrant effective only in New York, he threatened Robert Herskowitz,

“If, in fact there is an arrest warrant outstanding for Mr. Herskowitz it will be executed at the very latest the next time he shows his face in this courtroom.”

90. When Judith Herskowitz protested that this arrest warrant was from the New York case which was void for lack of personal jurisdiction, Judge Stripp directed his bailiffs,

“Would you Officers, please excuse, escort Ms. Herskowitz from the courtroom. Ms. Herskowitz is to be escorted out of the building. She can wait somewhere else for - - whoever she’s waiting for in connection with this.”

In the hallway Judith Herskowitz was shoved and beaten by these officers because she was not walking fast enough, leaving her black and blue and was forced to leave the courthouse.

91. By order entered on January 18, 1995 Judge Stripp denied reimbursement of the \$11,000.00 Judith Herskowitz, paid to Mr. Levitt, attorney for North Jersey, as a retainer fee and for expenses.

92. To bar Judith Herskowitz from hearings and from the courthouse, on February 1, 1995 Judge Stripp entered an order “sua sponte” holding Judith Herskowitz in contempt of court, for alleged acts committed by Judith Herskowitz “in presence of the court”. Judge Stripp considered Judith Herskowitz’s objections to the void New York judgments and to the liquidation of the North Jersey real property to be “disruptive behavior and [a] refusal to abide by instructions of the court”. Judith Herskowitz was prohibited from appearing personally in the courtroom, was restricted to partake in hearings only via telephone and to file and receive papers by mail. Judge Stripp further ordered that,

“Ms. Herskowitz shall not be permitted to remain anywhere in the courthouse in connection with any hearings in this court in this case...Therefore, the United States Marshal shall not permit Ms. Herskowitz access to this courthouse.”

So that Judith Herskowitz was also barred from examining public records in the Clerk's Office of the Bankruptcy Court.

93. Judge Stripp granted generous fees to the real estate broker, to the attorneys and others to be paid from the funds of North Jersey. By order dated March 20, 1995 Delibert was also rewarded with \$19,692.20 in fees and \$3,096.93 in expenses.

94. On May 25, 1995 the Herskowitzes filed a Motion for Summary Judgment in the Florida case, in the Dade County Circuit Court, seeking to deny full faith and credit on the New York judgments of Susan Charney individually and Susan Charney purportedly on behalf of North Jersey Trading Corporation for lack of personal jurisdiction.

95. Among the Herskowitzes' numerous documents in support of the motion, was the excerpt of the transcript from the December 29, 1993 Florida bankruptcy hearing, wherein Delibert conceded in sworn testimony, that Justice Tompkins' October 2, 1991 order ruling that the Herskowitzes withdrew their objections to jurisdiction was unsupported by the record.

96. Charney responded with a Cross-Motion For Summary Judgment supported with an "Affidavit in Opposition to Motion for Summary Judgment and in Support of Charney's Cross Motion for Summary Judgment" sworn to on June 6, 1995, by Delibert and filed by Charney on June 15, 1995. The facts stated in the Herskowitzes' affidavit that they have not withdrawn their objections to jurisdiction were undisputed.

97. However, Delibert fabricated a new set of false facts in his affidavit, never before raised in the Supreme Court of New York or in any other court. Delibert claimed that the New York court affirmatively determined its own jurisdiction on Charney's Motion for Default, in the April 9, 1991 decision embodied in the May 21, 1991 order of Justice Tompkins ordering the Herskowitzes to answer the amended complaint. Delibert knowingly and willfully falsely misrepresented that this

was an independent determination on personal jurisdiction.

98. On June 28 1995, the Motion for Summary Judgment came on for hearing. By agreement of the parties it was heard by General Master John R. Farrell. Because Charney refused to submit to discovery, Charney's Cross Motion for Summary Judgment was not heard and so Delibert's affidavit was not in issue.

99. The court then considered only the Herskowitzes' affidavit and Delibert's sworn admission that the Herskowitzes have not withdrawn their objections to jurisdiction. The General Master made the finding in his September 6, 1995 Report based on the undisputed fact, that on Charney's December 1988 service, the Herskowitzes were served only with a motion, which was insufficient to commence an action under New York law and moreover that

"The Herskowitzes' alleged "withdrawal" of their objections to personal jurisdiction is unsupported by the record. It seems clear that the order of Justice Tompkins reciting that the objection to jurisdiction had been "withdrawn" is unsupported by the record."

The General Master further noted that,

"Notwithstanding that the defendants Herskowitzes repeatedly raised the issue of jurisdiction over their person in each of the various lawsuits, all courts denied relief to the Herskowitzes yet none are shown by the record to have ever addressed the personal jurisdictional issue on the merits."

The General Master recommended that judgment be entered in favor of the Herskowitzes.

100. Charney declared in her Exceptions to the General Master's Report filed on September 5, 1995 that the New York court's determination on personal jurisdiction

"was not reached in the October 2, 1991 decision" on that "earlier permitted withdrawal of their jurisdictional objections. Rather, jurisdiction was clearly determined in the April 9, 1991 decision and resulting May 21, order."

Charney conceded that Justice Tompkins was fully aware in his April 9, 1991 decision that pursuant

to the May 8, 1990 order the Herskowitzes have not withdrawn their jurisdictional defenses but, only “a motion to reargue Justice Silbermann’s [prior] order setting the jurisdictional issue down for a factual hearing.”

101. Charney’s Exceptions were overruled by Judge Rosemary Usher Jones and on November 2, 1995 Judge Jones entered a Final Judgment among others holding that,

“the documents CHARNEY sought to have served upon the HERSKOWITZES were legally insufficient to commence an action in the Supreme Court of New of the State of New York. Accordingly, all proceedings in the New York State courts (trial and appellate) were null and void ab initio;

The judgments and order that CHARNEY seeks to domesticate are thus not entitled to full faith and credit for lack of in personam jurisdiction.”

Charney appealed the Final Judgment to the Third District Court of Appeal.

102. During pendency of the above proceedings, the U.S. Court of Appeals for the Third Circuit to avoid a review on the merits, in a September 6, 1995 decision affirmed the order of District Court denying the appeal on the ground that it was mooted by the completion of the sale. Delibert’s Motion for Second Allowance of Attorney Fees for having “actively assisted and cooperated with the Trustee” to sell the North Jersey property and to uphold the New York derivative judgments was granted by Judge Stripp in a September 11, 1995 order for fees of \$24,310.00 and expenses of \$2,860.72 for the period of January 1, 1995 to July 31, 1995,

103. The Herskowitzes secured from the Florida court an injunction enjoining Charney from collection activities on the void New York judgments. To avoid the effect of that injunction, Charney rushed into the Supreme Court of New York and by order dated November 20, 1995 secured the appointment of attorney Paul Windels III as post-judgment receiver to collect and receive funds on the New York derivative judgments.

104. By motion dated January 12, 1996 Charney also moved in the New Jersey Bankruptcy

Court to hold the Herskowitzes and their Florida counsel Ira Dubitsky in contempt of court for having procured the Florida injunction. Charney claimed it enjoined

“even Trustee from exercising control over any property of Debtor [North Jersey] or its estate, even including the assets held by the Trustee in consequence of the sale of Debtor’s real estate ordered by this Court”.

Charney’s concern was that there should be no impediment to Bezner handing over the North Jersey surplus funds to the New York receiver.

105. The matter came up for hearing before Judge Stripp on February 25, 1996. xxx and xxx Herskowitz and Dubitsky appeared through counsel and Judith Herskowitz appeared pro se via telephone from Florida. The phone conference was arranged by Delibert, who participated in that February 25, 1996 hearing as well as Bezner.

106. Judge Stripp denied Charney’s motion upon reluctantly conceding that there was no willful violation to constitute contempt; that the Herskowitzes were within their right to secure the injunction; and the injunction would have no effect on the funds in the hands of Bezner because it was under the jurisdiction of the Bankruptcy Court.

107. By motion dated May 9, 1996 the Herskowitzes moved in the Bankruptcy Court for full faith and credit on the Florida Final Judgment, which judgment together with the General Master’s Report they previously served and filed in the Bankruptcy Court on November 2, 1995. The matter came on for hearing on October 24, 1996. Judith Herskowitz was again allowed to appear only through a telephone conference from Florida, after having been contacted by the Bankruptcy Court. Both Delibert and Bezner participated in the hearing.

108. Again Charney’s concern was that Bezner as trustee should proceed to terminate the Bankruptcy Court case and to transfer the North Jersey surplus funds to the New York receiver. However, it has become clear that under the Last in Time Judgement rule, the Florida Final

Judgment would have to be given full faith and credit in all jurisdictions. By order entered on November 13, 1996, the Herskowitzes' Motion for Full Faith and credit was adjourned pending determination on Charney's appeal in the Florida court.

109. In a motion dated July 18, 1996 Bezner made a Second Application for Fees in the Bankruptcy Court seeking fees for the sale of the building; for opposing the appeal on the sale; for securing fees for the professionals she retained in connection with the sale; for supporting the New York derivative judgments; and for opposing Judith Herskowitz's application for reimbursement of the \$10,000.00 fee paid to retain counsel for North Jersey. Bezner's make work at \$200.00 an hour, again consisted of endless phone calls, writing of letters and reading of papers of others. Judge Stripp overruled the objections to Bezner's fees and by order dated November 14, 1996 approved fees of \$55,260.00 and expenses of \$8, 207.58.

110. In July 1996, Charney filed her brief in the Third District Court of Appeal in Florida. She reiterated almost verbatim Delibert's June 6, 1995 perjured "Affidavit in Opposition to Motion for Summary Judgment and in Support of Charney's Cross Motion for Summary Judgment" and complained that,

**"In the original underlying shareholder's derivative action, Charney v. North Jersey Trading Corp., et al., Supreme Court, New York County No. 24517/88, the court affirmatively determined its own jurisdiction, on a motion by Susan Charney in which the Herskowitzes actively participated, and lost.**

"The Herskowitzes apparently convinced the master in the court below, entirely incorrectly, that there was no decision on personal jurisdiction by the New York courts, because the Herskowitzes own dismissal motions were not decided on the merits but, the Court apparently overlooked entirely, -- that the Decision of Justice Tompkins of the Supreme Court, New York County, dated April 9, 1991 (submitted with the Herskowitzes moving papers below), embodied in an order entered in New York on May 21, 1991 (Herskowitz Exhibit 15 below), which ordered the Herskowitzes to answer the complaint, was rendered:

**a. On a motion by plaintiff Charney for default judgment for the defendants'**

**failure to answer;**

**b. After full briefing and argument in which the Herskowitzes actively participated; and**

**c. After personal service was made for a second time, on all of the Herskowitz defendants....."**

"That decision of New York Supreme Court may be correct, as Charney claims; it may be incorrect as the Herskowitzes claim -- but it is a decision by the trial court on the issue of its own personal jurisdiction, after a motion, on which defendants participated at length".

111. The appeal came up for oral argument on January 22, 1997. Judge Alan Schwartz listened attentively to Charney's Florida attorney Eric Christu espousing Delibert's version of the May 21, 1991 order which he knew to be false. Judge Schwartz failed and refused to listen to the Herskowitzes' counsel Ira Dubitsky pointing out the fact, that the New York court never determined personal jurisdiction on the merits and the only purported order on jurisdiction was Justice Tompkins' October 2, 1991 order, ruling that the Herskowitzes withdrew their objections to jurisdiction, which conceded by Delibert was unsupported by the record.

112. Judge Schwartz, became impatient, raised his voice and cut off Dubitsky.<sup>13</sup> What was by an obvious prearrangement, Judge Schwartz pointed to a paper in the record before him and firmly asserted that "the May 21, 1991 order determined personal jurisdiction over the Herskowitzes". Judge Schwartz proclaimed that the lower court was without authority "to hear and determine that the New York court had no jurisdiction over the Herskowitzes" and questioned "Who was that little Master to reverse the New York court". Whereupon, Judge Schwartz declared "I will not reverse the New York court" and vowed to uphold the New York judgments. Judge

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<sup>13</sup> On May 10, 2000 Judge Alan R. Schwartz was publicly reprimanded by the Florida Supreme Court, for "his rude, impatient, and discourteous remarks on the bench addressed to counsel and their clients".

Schwartz then abruptly terminated oral argument and left the courtroom followed by Judges Green and Goderich who sat by silently.

113. In an opinion dated February 5, 1997 Judge Schwartz, joined with Judges Green and Goderich reversed the Final Judgment. Acting in concert with the New York court to uphold its judgments, the panel of Judges relied on Delibert's affidavit, used by Charney in support of her appeal, the Judges saying in their opinion that "we agree with Charney"

"that the New York Supreme Court had already determined the issue of personal jurisdiction and therefore, the Herskowitzes were barred from relitigating the issue of personal jurisdiction based on the doctrine of res judicata."

The Court stated that it arrived at its decision based on the review of the record before them.

114. The Petition for Discretionary Review was denied by the Florida Supreme Court on September 11, 1997. However, the issue was limited to Charney's argument of res judicata based on Delibert's version of the May 21, 1991 order. That Delibert's affidavit was false was not before the Third District nor before the Florida Supreme Court, because Charney's Motion for Summary Judgment was never heard by the lower court due to her discovery violations.

115. Therefore, the complete New York record evidencing that no determination on personal jurisdiction was made in that April 9, 1991 decision settled by the May 21, 1991 order, was not before the court and so, the Third District's decision based on Charney's arguments was without any evidentiary basis.

116. Following remand the Herskowitzes repeatedly sought an opportunity to be heard in the lower court on Delibert's affidavit, that it was false on its face, because the Herskowitzes did not lose on the Motion for Default as he claimed but, it was denied in that May 21, 1991 order; N.Y. CPLR 2219 mandates that a judge state his determination in his order in detail but, there is no

recitation in that April 9 decision and May 21 order, of any determination on personal jurisdiction; under N.Y. CPLR, 3018 a party may plead defenses in a responsive pleading; under N.Y. CPLR 3211(e) defenses may be raised by motion; and Delibert agreed in that June 26, 1991 stipulation that the Herskowitzes may “move” in lieu of an answer.

117. The Herskowitzes sought an evidentiary hearing on the numerous documents from the New York court not previously before the court showing that for more than four months *after* that April 9, 1991 decision and May 21, 1991 order, the issue of personal jurisdiction was still undecided, and was actively litigated by Charney on the Herskowitzes' Motion To Dismiss the amended complaint filed on July 2, 1991 in the New York Supreme Court.

118. Among those were documents i.e. in the U.S. District Court for the Southern District of New York<sup>14</sup> signed by Delibert, which firmly establish that prior to Delibert's June 6, 1995 affidavit, Charney relied only on that alleged withdrawal of objections in the October 2, 1991 order i.e. in her Answer to Plaintiff's Request For Admissions sworn to by Charney on January 6, 1993, repeated verbatim in her Answer filed on September 22, 1993 as follows:

"it has been expressly held and determined by Justice Tompkins of the Supreme Court, New York County, adhered to by him on application for reargument, and affirmed by the New York Supreme Court Appellate Division, First Department,

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<sup>14</sup> This action was commenced in 1992 by the Herskowitzes in the U.S. District Court for the Southern District of Florida seeking injunctive relief to enjoin the enforcement of the void New York judgments. On Charney's motion it was transferred to the Southern District of New York. Delibert then scheduled the Herskowitzes' deposition in New York City at his office only about three blocks from the courtroom of New York State Court Justice Tompkins where the Herskowitzes were directed to be taken on the outstanding warrants of arrest to force them to hand over all their North Jersey stock certificates. When the Herskowitzes declined to appear in New York City without some form of protective order from the District Court, by order dated August 18, 1994 Judge Miriam Goldman Cederbaum dismissed the case with prejudice. When the Herskowitzes appealed to the 2<sup>nd</sup> Circuit they were sanctioned in the sum of \$2,500.00 and U.S. Marshals were looking for them in their Florida homes terrorizing them with warrants of arrest which finally ceased upon payment of the sanctions.

from which no further appeal has been taken, that the said reference in Justice Silbermann's order was to service of the Orders to Show Cause; that in permitting withdrawal of the Herskowitz defendants motion to reargue, Justice Silbermann was determining that jurisdiction existed; and that no issues of personal jurisdiction remained in the action."(Emphasis added)

119. The Herskowitzes were repeatedly stonewalled. They were denied any meaningful opportunity to be heard on the fraud perpetuated by Charney with Delibert's perjured affidavit. That newly minted false claim of an independent determination on personal jurisdiction in that April 9 1991 decision and May 21, 1991 order, raised for the first time in the Florida case.

120. On October 1, 1997 the Herskowitzes filed a Notice of Trial in the Dade County Circuit Court. A Pre-trial conference was held on February 3, 1998 before Judge Murray Goldman. By order dated February 10, 1991 Judge Goldman denied a trial on the fraud perpetuated by Charney, simply by relying on the position taken by Judge Schwartz, articulated in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997).

121. However, Judge Goldman did recognize that the appeal was pursued by Charney only individually. Judge Goldman entered an order on the same day of February 10, 1998 holding that "Charney's appeal in her individual capacity does not serve as an appeal by her on behalf of North Jersey Trading Corporation or an appeal by North Jersey Trading Corporation" and therefore "the final judgment of November 2, 1995 remains in full force and stands unreversed as to North Jersey Trading Corporation."

122. Charney then proceeded with an untimely Motion for Re-hearing and a Motion to Vacate both of which were denied by Judge Goldman. On June 25, 1998 Charney filed in the Third District Court of Appeal a Motion to Enforce Mandate And/Or Petition for Writ of Certiorari. The Herskowitzes opposed the Motion and Writ on the ground that, Charney was seeking to modify the mandate to add Charney on behalf of North Jersey as appellant regardless, that the motion was untimely because the term of the court in which mandate issued expired and the Writ of Certiorari

filed on June 25, 1998 was also untimely because, it was filed more than thirty days after entry of the February 10, 1998 order.

123. The matter was fully briefed by Daniel Pearson, counsel for the Herskowitzes and was set for oral argument for September 17, 1998. But, the day before on September 16, 1998 the hearing was cancelled. By order dated September 16, 1998 the same panel of judges led by Judge Alan Schwartz who sat on the prior appeal, granted Charney's Motion to Enforce Mandate and quashed the February 10, 1998 order of the lower court. The Court ruled without any supporting authorities and statement of the facts, that the "Court clearly reversed the final judgment in its entirety".

124. Thereafter, the attorneys for the Herskowitzes declined to take further steps. On September 11, 1998 Judith Herskowitz filed in proper person in the Dade County Circuit Court a Motion to Strike Delibert's Perjured Affidavit accompanied with the additional New York record and with a Memorandum of Law replete with citation of authorities supporting that matters not previously before the court on the Motion for Summary Judgment were not barred by the Third District's 1997 decision. The motion was unopposed by Charney. At a September 29, 1998 hearing a Request for Evidentiary Hearing was denied by Judge Goldman asserting "At this point I am not having an evidentiary hearing" and he declined to rule on the motion.

125. On October 27, 1998 the Herskowitzes filed and served a Motion to Hold Charney in Contempt for Her Bad Faith and Perjured Affidavit. The Motion for Contempt was set for a hearing for November 12, 1998. When on November 12<sup>th</sup> Judith Herskowitz attempted to enter the courtroom of Judge Goldman, his bailiff John stood in front of the door and barred Judith Herskowitz from entering the public court room, informing her that Judge Goldman will not hear the motion.

126. By obstructing the Herskowitzes from proving the falsity of Delibert's affidavit and Charney's claims, Delibert, Charney and Bezner were given free reign to pursue and harass the Herskowitzes, to coerce them to settle, in attempts to eliminate them from sharing in the surplus funds of North Jersey and to extort additional moneys from them. In a turnover proceeding in the New York court, Charney through Delibert took possession of the subscription agreement to the right to purchase that certain New York City apartment as a co-op. Charney threatened to sell the subscription agreement at a sheriff's sale and to oust its occupants, who at the time was Robert Herskowitz with his wife and three young children.

127. Robert and xxx Herskowitz eventually entered into a Settlement Agreement dated December 1988. Pursuant to the terms of the agreement Robert and Xxxx were required to pay the sum of \$150,000.00 and to give up their claim to the surplus funds of North Jersey, estimated in the sum of \$700,000.00. The \$150,000.00 was in "full payment" for all of Charney's New York judgments individually and on behalf of North Jersey against Robert and Xxxx Herskowitz, for which "they were provided" "full and absolute satisfaction or vacatur" of the judgments. The "vacatur" was agreed to be the "preferred alternative".

128. Charney's Motion for Approval of Settlement came up for hearing before the Bankruptcy Court on April 19, 1999. Judith Herskowitz was again relegated to appear only by telephone conference from Florida, after she was called by the Bankruptcy Court. Judge Stripp made clear that he took the position to approve the settlement on the pretext that,

"the settlement resolves the dispute between Susan Charney and Robert and Xxxx Herskowitz removes Robert and Xxxx Herskowitz from the case, and thereby removes the case as a whole, moves the bankruptcy case as a whole, further along toward conclusion."

Judge Stripp overruled all objections of Judith Herskowitz including on her subsequent Motion for

Rehearing of the April 19, 1999 Order Approving Settlement Agreement.

129. Judge Stripp and the parties acknowledged that New York law applied to the judgments and to the Settlement Agreement and the specific laws cited by Judith Herskowitz were undisputed. But, Judge Stripp failed and refused to apply the New York law which prohibits the vacatur of judgments by agreement of the parties as condition of settlement, either by the filing of a vacatur with the clerk of court, or by application to the court; which is the same in federal court;<sup>15</sup> N.Y. CPLR 5020 which requires the recipient of the satisfaction of judgment file in the proper court a satisfaction piece and to serve same on all judgment debtors; and that where the judgments were jointly and severally against all the Herskowitzes<sup>16</sup>

"the satisfaction of a judgment rendered against one tort-feasor discharges all joint tort-feasors from liability to the plaintiff."

130. Concurrently, while the proceedings on the Settlement Agreement were pending in the Bankruptcy Court, Judith Herskowitz continued on with her attempts to be heard by Judge Goldman in the Florida cases. On April 6, 1999 she filed and served a Motion for Summary Judgment and

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<sup>15</sup> Paramount Communications v. Gibraltar Casualty Co., 212 A. D.2d 490, 623 N.Y.S.2d 850 (1st Dep't 1995) cited under Siegal, Practice Commentary to McKinney's CPRL C5015:11, 1995. The Paramount court adopted its ruling from Bancorp Mtge. Co. v. Bonner Mall Partnership, 513 U.S. 18, 115 S.Ct. 386, 392 (1994) in accord Clarendon Ltd. V. NuWest Industries, Inc. 936 F.2d 127 (3<sup>rd</sup> Cir. 1991)

<sup>16</sup> Valazquez v. Water Taxi, Inc., 426 N.Y.S.2d 467, 468; 403 N.E.2d 172 (1980) and Vincent C. Alexander, Practice Commentary to McKinney's CPRL C1401:1, 1996. In Rock v. Reed-Prentice Division of Package Machinery Co., 382 N.Y.S. 720, 723; 346 N.E.2d 520 (1976) the Court of Appeals made clear that, in a compromise after judgment with one of the joint tortfeasors, even if the plaintiff accepted less than the full amount of the judgment, but the settlement amount was paid as full satisfaction of the judgment "the plaintiff's judgment has been completely discharged". (Emph. supplied) This applies even where there are two judgments but, are based on the same injury. Gallivan v. Pucello, 329 N.Y.S.2d 211 (4th Dep't 1972) in accord, Blanco v. J & B Associates, 576 N.Y.S. 2d 124 (1st Dep't 1991).

on June 10, 1999 she filed a Motion to Deem Admission Admitted Alternatively to Compel Answers. The Request for Admissions was served on Charney previously on September 23, 1998. The motion was set for a June 17, 1999 hearing, but was cancelled by Judge Goldman, claiming in a letter dated June 10, 1999, that the case was concluded although, Judge Goldman never entered a final judgment following the Third District's reversal of the 1995 Final Judgment.

131. On June 25, 1999 Judith Herskowitz filed and served a Motion for Disqualification of Judge Goldman, for his failure and refusal to hold a hearing on Judith Herskowitz's motions. A hearing on the Motion for Disqualification was set for June 30, 1999. However, prior to that hearing Judith Herskowitz was informed by Gamma Stafford an assistant to Judge Goldman that he recused himself from the case and so the June 30, 1999 hearing was cancelled.

132. Following that, on July 6, 1999 two orders vacating the New York judgments were procured by Charney from Judge Goldman. The orders were submitted by Charney's attorney Eric Christu in *ex parte* communication with Judge Goldman without any notice and hearing to Judith Herskowitz. The July 6, 1999 orders were entered *ex parte* and dismissed all the Florida cases with prejudice and all the New York judgments were

**"vacated in their entirety and set aside in their entirety *solely as against Robert Herskowitz and Mar k Herskowitz.*"**

133. The July 6, 1999 *ex parte* orders were never served on Judith Herskowitz. She discovered the July 6<sup>th</sup> orders only at a later date when she was looking through the court files in the Miami-Dade County Circuit Court. Judith Herskowitz pursued an appeal in the Third District Court of Florida from the July 6, 1999 orders.

134. At the August 30, 1999 hearing successor Judge Paul Siegel prohibited Judith Herskowitz to conduct any form of discovery and simply "denied" her Motion to Deem Admissions

Admitted. Judge Siegel refused to set down for hearing Judith Herskowitz's Motion for Summary Judgment. On September 16, 1999, she then filed and served a Motion to Dismiss and to Strike Charney's domestication cases and to strike her pleadings based on the fraud perpetrated on the court with Delibert's perjured affidavit. The motion was supported with numerous New York documents not previously before the Florida court, also with an affidavit and a Memorandum of Law demonstrating with well settled authorities that the Third District's reversal constituted no bar to the motion. Charney filed no papers in opposition.

135. The Motion to Strike came up for hearing on November 23, 1999. Although all the additional New York documents and Judith Herskowitz's affidavit and her other papers were filed previously in the court and on September 16, 1999 Judith Herskowitz personally had seen to it that those papers were taken to the chambers of Judge Siegel, all these papers mysteriously disappeared and could not be located. Judge Siegel informed the parties at the hearing "They just told me they do not have it". Judge Siegel conceded that he has not seen any of these papers prior to the hearing.

136. When Judith Herskowitz asked to be sworn in, Judge Siegel refused to do so, saying:

This is not an evidentiary hearing. This is a hearing for me to consider argument on the documents that have been filed." (Emphasis supplied)

Judge Siegel then turned the hearing into an oral argument whether he should even consider the additional New York documents. The authenticity of the New York documents was conceded by Eric Christu attorney for Charney. The facts stated in the affidavit, that Delibert's affidavit was false, because no determination on personal jurisdiction was made in that April 9, 1991 decision and May 21, 1991 order were undisputed. Judge Siegel acknowledged that Charney "doesn't have a Florida judgment yet. She has a New York default judgment".

137. Judith Herskowitz was allowed only a brief oral argument. To avoid a response,

Charney's attorney Eric Christu engaged in a long colloquy of history of the case, which even Judge Siegel acknowledged was irrelevant. Christu then rested on the prior reversal by Judge Schwartz in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997) to buttress the covenant that the New York judgments could not be challenged.

138. Concurrently, in the New Jersey Bankruptcy Court, on November 24, 1999 Bezner filed a Motion to Complete Administration and to Dismiss Case claiming that, the estate of North Jersey was in the process of being fully administered; the shareholder dispute between Charney and Robert and Xxxx Herskowitz was resolved with the Settlement Agreement; the remaining shareholder dispute between Charney and Judith Herskowitz was pending in the New York and Florida State courts; and so Bezner asked to dismiss the case and to transfer the surplus funds to the New York receiver.

139. In her December 10, 1999 response Charney through Delibert readily joined in support of the motion asserting that

“there remain bitterly contested issues between Susan Charney and Judith Herskowitz, as to who is entitled to the surplus remaining on behalf of the debtor.” Charney further asserted that since Judith Herskowitz had no standing to raise the issues on the Settlement Agreement in the Bankruptcy Court as to,

“what extent the settlement violated any provision of New York law was an appropriate resolution for the New York court .”

140. On December 14, 1999 the New York receiver Paul Windels III filed in the Bankruptcy Court an Affirmation dated December 13, 1999 in which he acknowledged that he was appointed under a November 20 , 1995 order of the Supreme Court of New York to collect on the New York derivative judgments, and declared under penalty of perjury that

“I shall hold all funds that come into my possession as receiver in an interest-bearing or checking account with the bank of New York in New York and shall disburse no funds except upon and pursuant to the order of the Supreme Court [of New York].”

141. On December 10, 1999 Judge Siegel had entered an order in the Florida case denying Judith Herskowitz's Motion to Dismiss and to Strike. Judge Siegel failed and refused to rule on the issue of fraud perpetrated by Charney with Delibert's perjured affidavit, although Judge Siegel clearly understood that that was the issue saying as follows:

"Mrs. Herskowitz has moved to strike Mrs. Charney's pleadings because she contends that Mrs. Charney's appellate victory was obtained by and founded upon a false and fraudulent affidavit dated June 6, 1995 by Mrs. Charney's New York attorney, Steven Delibert, who claimed that the Supreme Court of New York affirmatively determined its own jurisdiction against the Herskowitzes in an action by Mrs. Charney in a decision of Justice Harold Tompkins dated April 9, 1991 settled by an order of May 21, 1991."

Then, Judge Siegel instead of ruling on the issue of fraud recycled the October 2, 1991 order in total disregard of the record before him that it was already proven and conceded by Charney that no determination on jurisdiction was made in that order, Judge Siegel saying as follows:

"there is no doubt whatsoever that the New York courts did determine jurisdiction over the defendants in Mrs. Charney's action. That jurisdictional determination, if not done previously, was in fact made by Justice Tompkins' order of October 2, 1991."

Judge Siegel then concluded that,

"Since the New York courts determined they had jurisdiction over Charney's action, this court cannot conclude that Ms. Charney defrauded this court by filing Mr. Delibert's affidavit which stated that the New York court determined they had jurisdiction over Ms. Charney's action".

142. Judith Herskowitz moved for Reconsideration and Rehearing and to Vacate and Set Aside the Order Denying the Motion to Dismiss and to Strike entered on December 10, 1999 and requested a hearing. Noted in the motion was that Judge Siegel overlooked that Justice Tompkins never determined personal jurisdiction in that October 2, 1991 order but, claimed that a predecessor judge in a prior order permitted the Herskowitzes to withdraw their objections to jurisdiction, which Delibert conceded in his December 29, 1993 sworn testimony was unsupported by the record.

143. In an order entered on December 29, 1999 Judge Siegel disposed of the motions simply with a “denied” without a hearing. Following that Judith Herskowitz noticed on Judge Siegel’s January 6, 2000 motion calendar a “Request for Hearing on the Motion for Reconsideration”. Although the case was on the motion calendar, on instructions of Judge Siegel, his bailiff Don Nelson stood in front of the door and barred Judith Herskowitz from entering the public courtroom. Judith Herskowitz pursued an appeal from the orders of Judge Siegel to the Third District Court of Appeal of Florida.

144. Judith Herskowitz also pursued an appeal in the U.S. Court District Court, in Trenton New Jersey from the Bankruptcy Court’s April 19, 1999 Order Approving Settlement Agreement. It was opposed only by Bezner. Judith Herskowitz raised the issue in a formal brief, that the lower court failed to apply the applicable New York law holding that, parties cannot agree to the vacatur of the judgments as condition of settlement; that Bezner as the recipient of the settlement fund was required to file and serve a satisfaction of the judgments; which discharges the New York judgments as to Judith Herskowitz as well; and so there would be no receiver since his appointment was only for the enforcement of the derivative judgments.

145. Bezner argued irrelevant technicalities in her answer brief among others, that Judith Herskowitz had no standing because “she is not a ‘person aggrieved’ by the settlement, which does not effect her in anyway” and reasserted that the Bankruptcy Court properly declined to exercise jurisdiction over the State Court issues because that should be litigated in the New York court.

146. Oral argument was denied because as Judith Herskowitz was informed by a law clerk of District Judge Garret E. Brown, pro se litigants are not given oral argument. In a February 18, 2000 unpublished order it was emphasized that “the *pro se* appeal of appellant Judith Herskowitz” “is denied and is “dismissed with prejudice”. The order was devoid of any statement of the facts,

citation of authorities and conclusion of law. The court once more failed and refused to hear and to make a determination on the merits of the above stated issues raised by Judith Herskowitz.

147. Judith Herskowitz pursued an appeal from the February 18, 2000 order in the United States Court of Appeals for the Third Circuit. To moot the appeal with the dismissal of the underlying case, Judge Stripp of the Bankruptcy Court proceeded with Bezner's Motion to Dismiss. On March 6, 2000 Judge Stripp issued a Letter Opinion informing the parties that there would be no oral argument on Bezner's Motion to Dismiss. Judge Stripp reaffirmed this in his March 20, 2000 Letter Opinion and directed that applications for professional fees be filed by May 8, 2000.

148. Bezner in her capacity as trustee filed an application for fees for \$98,139.87 and expenses for \$1,474.58 in the total sum of \$99,614.45. Bezner based her trustee's fees on the maximum statutory fee of 3% allowed above \$3,000.00 by 11 U.S.C. 326(a) for disbursing the sum \$3,265,328.90 for North Jersey. These funds consisted of the close to 3 million dollars received by Bezner on the sale of the real property, \$150,000.00 on the settlement with Robert and Xxxx Herskowitz, plus interest earned.

149. Bezner claimed 270 hours as trustee, which comes to \$370.00 an hour, almost double her \$200.00 hourly fee as the attorney. The trustee's fees were for make work which could have been easily dispensed with. Bezner also sought further fees as the attorney for herself as trustee, in the sum of \$28,792.50 and expenses of \$5,002.57 in the total sum of \$33,795.07 and fees for her accountant Bederson & Co. in the sum of \$34,076.25 and expenses of \$398.82 for a total sum of \$34,475.07 (in addition to a prior award of \$40,000.00 in fees to Bederson).<sup>17</sup> The new fee

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<sup>17</sup> The accountant's fees consisted of make work on simple tax returns by a Senior partner, partner, manager, tax manager, five senior accountants, one semi senior accountant, one staff associate, one para professional, a total of eleven "professionals", who consulted, reviewed, revised among themselves and created numerous hours for inflated fees and also created fees for Ms. Bezner

application was in the total sum of \$167,884.59 to be paid from the funds of North Jersey.

150. Although Judith Herskowitz requested supporting documents on Bederson's latest fee application, none was provided. Judith Herskowitz filed extensive objections to the fee applications. She also objected to the proposed disbursement of the remaining \$700,000.00 to the purported New York receiver instead to North Jersey as required under 11 U.S.C. § 349 which mandates that upon dismissal of the bankruptcy case all the remaining assets be turned over to debtor that is to North Jersey, and without any fees to Bezner as trustee.

151. The fee applications were scheduled to be heard on June 12, 2000. Again Judith Herskowitz was allowed to appear only by telephone. However, the court of Judge Stripp failed to call Judith Herskowitz, her phone calls seeking to participate in the hearing were disregarded and were not returned. Upon information on that same day of June 12, 2000 an order was entered *ex parte* by Judge Stripp, approving all the fee applications, without allowing any objections and without ever serving that June 12<sup>th</sup> order on Judith Herskowitz.

152. On July 10, 2000 Judge Stripp issued a Letter Opinion granting Bezner's Motion to Dismiss the bankruptcy case. Judge Stripp berated the Herskowitzes. Judge Stripp eagerly relied on what he knew were void New York orders as a pretext for having appointed Bezner as trustee and acknowledged that his appointment was strictly on Charney's motion as follows:

“Ms. Charney moved for appointment of a trustee on the basis of the evidence of the Herskowitzes' misconduct, and for relief of automatic stay for entry of judgment in the state court in favor of the debtor and against the Herskowitzes. This court granted that motion. Karen Bezner, Esq. was appointed chapter 11 trustee.”

153. Judge Stripp recognized that there remained about \$700,000.00 in the estate of North Jersey. Judge Stripp stated that “this fund belongs to the debtor's shareholders” and ruled that it was

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for conducting discussions, correspondence etc., with them.

to be transferred by Bezner to the New York receiver “for adjudication there of the shareholders’ rights therein between Judith Herskowitz and Susan Charney”.

154. On August 9, 2000 Judge Stripp entered an order dismissing the bankruptcy case and directed Bezner to deliver to the New York receiver Paul Windels, III Esq., all of the funds of North Jersey in her possession, save only the interest bearing escrow fund of the \$13,975.00 established for further fees to Bezner.

155. Judith Herskowitz noticed for hearing for October 30, 2000 a Motion for Reconsideration, Clarification of the Order Granting Trustee’s Motion to Dismiss Case and a Motion to Stay Pending Appeal. Judith Herskowitz traveled from Florida to Trenton New Jersey to attend the hearing in the Bankruptcy Court. However, Judge Stripp did not allow Judith Herskowitz in his courtroom, told her to leave and at any rate informed her that he had already ruled and had denied the motions.

156. On November 2, 2000 Judith Herskowitz went back to the Bankruptcy Court to review files in the Clerk’s Office. A security officer a Mr. Warren approached her and asked if her name was Judith Herskowitz. When she said “yes” that was her name, Mr. Warren told her that on orders of Judge Stripp she could not stay in the clerk’s office nor in the courthouse. She was then forced to leave, denying her the right of access to public records.

157. In her appeal from the February 18, 2000 order of the District Court to United States Court of Appeals for the Third Circuit, Judith Herskowitz reiterated in a formal brief the issues she raised in the District Court. She emphasized that under the Erie Doctrine the District Court was required to apply New York law to the Settlement Agreement. Bezner again avoided the merits of the appeal. Bezner reasserted in her answer brief that, Judith Herskowitz had no standing; that she should raise the state court issues in the New York court; and to add insult to injury Bezner

claimed that the appeal was moot because the underlying bankruptcy court case was dismissed and asserted without any evidence that, she had already transferred the funds to the New York receiver.

158. On November 14, 2000 Judith Herskowitz's Request for Oral Argument was denied, as a matter of practice because she appeared pro se. In an "Unreported Not Precedential" opinion entered on November 16, 2000 the Third Circuit affirmed the February 18, 2000 order of the District Court. No determination on the merits was made on the issues raised by Judith Herskowitz on the purported ground, that she had no standing to object to the Settlement Agreement. The Motion for Rehearing and for Clarification and all subsequent motions for clarification were simply "denied".

159. In the Third District Court of Appeal of Florida, in the appeal from the July 6, 1999 orders of Judge Goldman Judith Herskowitz raised the issue that, Judge Goldman was without jurisdiction to enter those orders after the Motion for Disqualification was filed on June 25, 1999 and after he recused himself on June 29, 1999; moreover, that he had no authority as a judge sitting in the State Court of Florida to vacate judgments entered by the State Court of New York; furthermore that the orders entered *ex parte* in *ex parte* communications on the merits, without notice and hearing, were void.

160. A pivotal issue raised in the appeal from the December 10, 1999 order was that Judge Siegel could not rely on the October 2, 1991 orders of the New York court as having determined personal jurisdiction, where it was already proven and was conceded by Charney and Delibert that this was unsupported by the record.

161. On Charney's motion the two appeals were consolidated. At the September 12, 2000 oral argument, the panel of judges Green, Sorondo and Levy showed no interest in the case, in the fraud perpetuated by Charney through Delibert's perjured affidavit nor in the voluminous evidence before them on the issue of fraud. On October 4, 2000 the panel issued a decision in the

consolidated appeals without making any determination on the issues and disposed of the appeals with a mere,

“PER CURIAM. Affirmed. Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997)”

162. All of Judith Herskowitz’s subsequent motions requesting the panel of judges to justify their decision on the facts and the law of the case and to hear and to make a determination on the merits of the appeals were simply “denied” with no explanation. Again no opposition papers were filed by Charney to any of these motions as set forth below.

163. On October 10, 2000 Judith Herskowitz filed a Motion for Rehearing and for Clarification raising the issue that the prior February 5, 1997 decision upon which the court relied, was a prior decision on Charney’s appeal reversing the 1995 Final Judgment and had no relevance to the current appeals. Not to Judge Goldman’s subsequent July 6, 1999 orders issued without jurisdiction and *ex parte* nor to the December 10, 1999 order of Judge Siegel on the issue of fraud which was not before the Third District on that prior appeal.

164. Attached to the motion was A Report and Recommendation on Committee on Per Curiam Affirmed Decisions published by the Judicial Management Council in May 2000. Reported by the Council was the fact that over 2/3 of the decisions are per curiam affirmed without opinion. This was highly criticized by the legal profession.<sup>18</sup> By order dated December 16, 2000 the motion was simply “denied” by the Third District.

165. On October 30, 2000 Judith Herskowitz filed in the prior appeal before Judge Schwartz

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<sup>18</sup> The use of PCA fosters unprofessionalism by the bench and bar, diminishes the appearance of fairness and meaningful access to the courts, limits possible review by the Supreme Court, conceals inconsistent results and allows the judiciary to avoid difficult decisions.’ ‘The power to PCA has been abused with no avenue of redress for litigants” “it undermines confidence in the integrity of the judicial system” etc.,

a Motion to Recall a Mandate and/or to Allow the Lower Court to Hear the Issues Raised on this Motion. A hearing was requested on the motion. Stated was the fact that Charney procured the reversal of the Final Judgment by a fraud perpetrated on the court and as such the motion was not barred by the expiration of the term of the Court. The facts of the fraud were fully detailed and was supported by the New York record not previously before the court. The court was also put on notice that the remaining funds of North Jersey in the approximate sum of \$700,000.00 was being confiscated under a purported transfer to the New York receiver, who remains only because the Third District upheld the void New York judgments. By order dated November 22, 2000 the motion was simply “denied”.

166. On December 7, 2000 Judith Herskowitz filed a “Supplemental Motion to Recall Mandate and to Vacate This Court’s Opinion in the prior appeal. Argued was the fact that this panel of judges could not bar a collateral attack on the New York judgments for lack of personal jurisdiction, while another panel of judges of the Third District affirmed the July 6, 1999 orders vacating the same New York judgments as to Robert and Xxxx Herskowitz upon payment of money. That this was also contrary to applicable New York law, prohibiting the vacating of the New York judgments as condition of settlement for payment of money. By order dated January 31, 2001 the motion and request for oral argument were simply “denied”.

167. On December 28, 2000 Judith Herskowitz filed a Motion to Vacate and Set Aside the December 16, 2000 Order in the consolidated appeal from the orders of Judges Goldman and Siegel. Judith Herskowitz again requested that before the Mandate issued, the Court clarify its October 4, 2000 “per curiam affirmed” decision and state the reasons for its denial of the Motion for Clarification. It was again pointed out that the void New York judgments were being used to appropriate the \$700,000.00, surplus to which North Jersey was entitled to and in which Judith

Herskowitzes had a right to share as a majority shareholder of North Jersey. By order dated January 31, 2001 the motion was again simply “denied”.

168. On February 15, 2001 Judith Herskowitz filed separate motions in both the prior appeal before Judge Schwartz and in the later consolidated appeal each motion titled Motion for Clarification and to Reconsider Order Denying Motion to Vacate and Set Aside the respective January 31, 2001 orders. Again asking for a review on the merits. The motions were again simply “denied” in the prior appeal with an order dated March 12, 2001 and in the later appeal with an order dated March 21, 2001.

169. On June 14, 2001 the court issued its Mandate in the later consolidated appeal. On June 14, 2001 Judith Herskowitz then filed a Motion to Recall Mandate among others for the Third District’s failure to make a determination on the merits of the appeal, but merely denying it based on another panel of judges’ unrelated prior decision. Judith Herskowitz also moved for clarification. The motions were simply “denied” by order dated July 18, 2001. Judith Herskowitz then filed a Motion for Clarification and to State Basis in Law for the Denial of Appellant’s Motions. By order dated August 29, 2001 this motion was also simply “denied”.

170. On July 27, 2001 Ms. Bezner made a further application in the New Jersey Bankruptcy Court for fees of \$13,983.75 and expenses of \$611.00. To abscond with these funds Bezner fabricated make work for 62.15 hours. Without the required notice of hearing under Bankruptcy Rule 2002 and before the 20 days provided for objections expired Judge Stripp<sup>19</sup> entered an *ex parte*

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<sup>19</sup> On September 14, 2001 Judge Stripp was removed from the bench. His request for reappointment to the Bankruptcy Court was denied by the judges of the U.S. Court of Appeals for the Third Circuit, upon information because of numerous complaints against him.

order on August 7, 2000 approving the fees and expenses without any hearing. In total Ms. Bezner as trustee and attorney for herself as trustee was awarded by the Bankruptcy Court fees and expenses from North Jersey in excess of \$250,000.00.

171. As to further attempts in the Third District Court of Appeal in Florida, on September 13, 2001 Judith Herskowitz filed under the title of both appeals a Motion for Clarification and to State Basis of the Denial to Recall Mandate and of the Judicial Function on Appeal. Emphasized was the fact that “denied” did not define the legal basis for the Court’s reliance on an affidavit fully supported by documentary evidence to be false, which fact was uncontested by Charney and the Court sitting in appellate review was required to apply the law correctly. That motion was also simply “denied” by order dated November 21, 2001, but only as to the later appeal.

172. On December 6, 2001 Judith Herskowitz filed a Motion to Reconsider this Court’s November 21, 2001 Order under the title of both appeals. This motion was also simply “denied” by order dated January 2, 2002. however only as to the later appeal. Then on January 17, 2002 Judith Herskowitz filed a Motion to State the Legal Basis for the Court’s Ruling of “Denied” under the title of both appeals. This motion was also simply “denied” by order dated February 6, 2002, but only as to the later appeal, with no response in the prior appeal before Judge Schwartz.

173. Although pursuant to the August 9, 2000 order of Judge Stripp dismissing the bankruptcy case, Bezner as trustee was required to transfer the \$700,000.00 “surplus” to the New York receiver, no papers evidencing that transfer were served on or were received by Judith Herskowitz; no papers were served and no papers were received by Judith Herskowitz from Paul Windels III acknowledging the receipt of those funds or any other papers relative to those funds from anyone else. Upon information no papers were filed or docketed in the Supreme Court of New York County in Charney’s case under Index No. 24517/88 following that August 9, 2000 Bankruptcy

Court order, relative to the disposition of said funds.

## COUNT I

### VIOLATION OF CIVIL RIGHTS

Plaintiff Judith Herskowitz sues Defendants, Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

174. Plaintiff repeats and realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 173 of the Complaint.

175. At all times relevant herein, the conduct of Delibert, Charney and Bezner was subject in state court to 42 U.S.C. § 1983 and §1985 and in federal court to the principles set forth in Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 91 S. Ct. 1999 (1971).

176. The Herskowitzes and Fried, citizens of Florida owned shares in North Jersey, which owned real property in New York City. Personal jurisdiction was essential over the Herskowitzes and Fried before Charney could pursue an action in the New York court to be declared a shareholder of North Jersey and a derivative suit on behalf of North Jersey.

177. Without a determination on the threshold issue of personal jurisdiction, and without according the Herskowitzes their day in court, Charney was declared a 40% shareholder of North Jersey. Judgments in excess of four millions dollars were entered by the New York court against the Herskowitzes on false claims of mismanagement and misuse of corporate funds to which they were prohibited to raise a defense. North Jersey was driven into bankruptcy.

178. When finally the Herskowitzes prevailed in the Florida court and a Final Judgment was entered denying full faith and credit on the New York judgments for lack of personal jurisdiction,

it was then reversed by the Third District Court of Appeal adopting from Charney's brief what was a newly minted false jurisdictional claim in an affidavit executed by Delibert. The Herskowitzes were barred from challenging the false affidavit. Under pretense of the bogus, void New York judgments Defendants assisted with court appointed fiduciaries seized assets of the Herskowitzes and North Jersey. Acting in concert with Bezner as trustee they confiscated the real property of North Jersey, obstructed the refinancing of the real property to liquidate it for personal benefit, and embezzled the remainder funds under pretense of transferring it to a court appointed receiver, leaving North Jersey an empty shell.

179. Delibert, Charney and Bezner acting individually, through their agents and in concert have unlawfully agreed and conspired among themselves and committed overt acts in furtherance of their plan to deprive Judith Herskowitz of her constitutional rights secured by the First, Fifth, Seventh, Ninth, Thirteenth and Fourteenth Amendment to the United State Constitution,

(a) the right to petition the government for redress of grievances; the right of access to public records; the right to a jury trial; the right to equal protection and enforcement of the law; the right to life, liberty and the pursuit of happiness; the right not to be deprived of property without due process of law; the right not to have property confiscated without just compensation; the right to an impartial tribunal; the right to privacy; the right to pursue one's own profession and business; and the right to travel to the State and City of New York.

180. As part of the conspiracy Charney through Delibert and with Bezner had agreed to induce through fraud and deceit certain immune State and Federal Officers and private citizens to act in furtherance of their plan, as set forth above.

181. The private extrajudicial agreement of Charney through Delibert and Bezner with immune State and Federal Officers is apparent from the following acts including but, not limited

to:

(a) orders and judgments entered without subject matter and/or without personal jurisdiction; orders, judgments and decisions based on falsified facts, which disregarded the law, misapplied the law; orders on fraudulent schemes to confiscate the Herskowitzes' corporate shares; orders to seize and misappropriate the real property of North Jersey and to confiscate all of its remaining assets; ex parte communications on the merits; ex parte orders on the merits; and the reversal of a Final Judgment on a perjured affidavit;

(b) denial of a meaningful opportunity to be heard on any of the above issues; denial of a full and fair hearing; denial to defend against false claims and a perjured affidavit; denial of the right to an evidentiary hearing and/or trial; denial of the right to a jury trial; denial of the right to discovery; denial of the right to appellate review; denial of the opportunity to present constitutional issues; and

(c) retaliation by judicial officers with sanctions, warrants of arrest; stonewalling Judith Herskowitz; barring her from court; barring her from entering the courtroom and even the courthouse.

182. The actions of Delibert, Charney and Bezner having acquired the character and authority of "state action" because carried out and effected under color of law in concert with immune State Judicial Officers and by their efforts to use the Court under purported state statutes, and/or rules of court. Delibert, Charney and Bezner having carried out their unlawful acts also under color of federal authority in concert with immune Federal Judicial Officers and by their efforts to use the Court under purported federal statutes and/or rules of court.

183. The entanglement of Charney through Delibert and that of Bezner with immune State and Federal Judicial Officers was unlawful. The aforesaid conduct of Delibert, Charney and Bezner pursued under color of state law and under color of federal authority with immune Judicial Officers

has resulted in irreparable injury and oppression to Judith Herskowitz, has deprived her of her property, of the free exercise and enjoyment of her rights and privileges as secured and guaranteed to her as a citizen and person defined in the United States Constitution and the federal civil rights statutes.

184. As a direct and proximate cause of the violations of Judith Herskowitz's civil rights by Delibert, Charney and Bezner, Judith Herskowitz has been injured and damaged in her person and property among others in the following respects:

(a) Judith Herskowitz the majority shareholder of North Jersey has suffered financial losses in the millions of dollars from the wrongful interference, confiscation and loss of the real property of North Jersey and from the destruction of North Jersey as a going concern.

(i) Judith Herskowitz's valuable stocks in North Jersey have been rendered worthless;

(ii) Judith Herskowitz suffered the loss of a business, loss of good will, loss of profits and loss of income, to which she was entitled to upon demise of Fried;

(iii) Judith Herskowitz has been deprived of millions of dollars of the incremental value of the real property, which could have been realized from the increased rental income on refurbishing the vacant apartments, to rent at "market", from the building of penthouses and other improvements and/or from co-oping the building which could have been done, had it not been obstructed by Delibert's, Charney's and Bezner's fraudulent schemes.

(iv) Judith Herskowitz has been deprived and defrauded of her share even in the remaining funds of North Jersey in the sum of \$700,000.00.

(b) Judith Herskowitz's credit has been destroyed by Delibert and Charney procuring the void New York judgments and by recording them in the Dade County Circuit Court and in the Supreme Court, County of New York.

(c) Judith Herskowitz suffered past, present and future loss of earning capacity. Judith Herskowitz was a businesswoman, a designer with a degree in interior design and a real estate saleswoman. Judith Herskowitz graduated from law school in 1992, but was prevented from practicing law as an attorney, inasmuch as she was unable to sit for the Bar Exam because of the demand on her time and energies by Defendants' relentless litigation and because of the inability to pay the tuition and loans owed.

(d) Judith Herskowitz was drained by the enormous cost of having to defend against the onslaught of Delibert's and, Charney' litigation since 1988 joined in 1993 by Bezner by the fees she had to pay to attorneys, the costs and expenses and the loss on her time.

(e) Judith Herskowitz was traumatized and devastated by the relentless, vexatious litigation pursued by Delibert, Charney since 1988 joined in 1993 by Bezner.

(f) Judith Herskowitz has been subjected to humiliation and embarrassment because, she has been forced to live under impoverished and degrading conditions, because of the enormous financial losses inflicted on Judith Herskowitz by Delibert, Charney and Bezner.

(g) Judith Herskowitz suffered substantial damages to her good reputation in the community because, her character has been severely and unjustifiably maligned.

(h) Judith Herskowitz has suffered substantial damages in the form of mental anguish and emotional distress.

(i) So multifarious and so notorious has this litigation become that Judith Herskowitz' right to privacy has been destroyed and she has and is being deprived of the enjoyment of the normal activities of life.

(j) She is even prevented from traveling to New York because of the warrants of arrest.

185. In that Delibert, Bezner and Charney deliberately and maliciously pursued this course

of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff prays for entry of judgment against Charney, Delibert and Bezner jointly and severally, for all allowable elements of damages including but, not limited to, compensatory and punitive damages in an amount in excess of Ten Million (\$10,000.000) Dollars with interest and for reasonable fees and costs of this action.

Plaintiff demands trial by jury.

## **COUNT II**

### **FOR PRELIMINARY, TEMPORARY AND PERMANENT INJUNCTION**

Plaintiff sues Defendants Hon. Alan R. Schwartz, Hon. Melvia B. Green and Hon. Mario P. Goderich Judges of the District Court of Appeal of Florida for the Third District, for declaratory and injunctive relief and alleges as follows:

186. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 173 of the Complaint.

187. At all times relevant herein, the conduct of the Defendants Judge Schwartz, Judge Green and Judge Goderich was subject to 42 U.S.C. § 1983 and § 1985.

188. Judge Schwartz, Judge Green and Judge Goderich were the judges on the three judge panel that presided in Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997). The appeal was taken by Charney from a November 2, 1995 Final Judgment of the Dade County Circuit Court. The Final Judgment was entered on the Herskowitzes' Motion for Summary Judgment.

189. The Final Judgment denied full faith and credit on Charney's New York judgments for lack of personal jurisdiction. It was based on a finding that, it was unsupported by the record that the Herskowitzes have withdrawn their objection to personal jurisdiction, which was conceded

by Delibert in his December 29, 1993 sworn testimony.

190. At the January 22, 1997 oral argument, Judge Schwartz firmly articulated that he would not allow the New York judgments to be reversed and would uphold the New York court. In a decision dated February 5, 1997 the Final Judgment was then reversed. Stated in that February 5<sup>th</sup> decision was that the Supreme Court of New York court determined personal jurisdiction over the Herskowitzes and so the Herskowitzes were barred from relitigating the issue based on the doctrine of res judicata.

191. However, that February 5<sup>th</sup> reversal relied on what was a newly minted false claim in a June 6, 1995 affidavit of Delibert, on which Charney rested her jurisdictional arguments in her brief. That June 6<sup>th</sup> affidavit was not in issue and was not heard in the trial court because, of discovery violations by Charney. Judith Herskowitz made numerous attempts, to be heard in the trial court as well as before Judge Schwartz, Judge Green and Judge Goderich and in a subsequent appeal in the Third District and to introduce into evidence the numerous New York documents not previously before the court, proving the falsity of Delibert's affidavit.

192. The Defendants Judge Schwartz, Judge Green and Judge Goderich have pursued and maintained and are pursuing and maintaining under color of state law, policy, custom and usage the practice of barring Judith Herskowitz with their 1997 decision in Charney v. Herskowitz, supra., from a full and fair hearing on the above described fraud and on other such issues in the trial court as well as in the Third District. Consequently, Judith Herskowitz has been deprived and continues to be deprived of the right to that 1995 Final Judgment, leaving the bogus, void New York default judgments in excess of four million dollars to irreparably harm Judith Herskowitz.

193. Judith Herskowitz has no plain, adequate or complete remedy at law, for the harm or damage inflicted on her by Judge Schwartz, Judge Green and Judge Goderich. Judith Herskowitz

has no remedy in State Court, because of the predetermination to uphold the void, bogus New York judgments without regard that they were entered wholly without jurisdiction.

194. Judith Herskowitz is suffering and will continue to suffer irreparable harm, damage and injury unless Judge Schwartz, Judge Green and Judge Goderich are enjoined, from continuing their policy, practice and usage of denying Judith Herskowitz access to court and depriving her of her property and of other rights without due process of law, in flagrant violation of her constitutional and civil rights secured by the United States Constitution under the First Seventh, Ninth, Thirteenth and Fourteenth Amendment.

WHEREFORE, Plaintiff prays as follows:

(a) for a preliminary injunction until a hearing in this matter; for a temporary injunction until a final hearing of this matter; for a permanent injunction upon a final determination of this cause:

(1) enjoining Judge Schwartz, Judge Green and Judge Goderich from denying, barring and obstructing Judith Herskowitz in the exercise of her constitutional right to access to court and to a full and fair hearing in the Dade County Circuit, in the Third District and in any other State or Federal court on the issue:

(i) that Delibert's affidavit sworn to on June 6, 1995 was false, because the Supreme Court of New York made no determination on the merits on personal jurisdiction over Fried and the Herskowitzes and/or because no independent determination on personal jurisdiction was made by Justice Tompkins in his April 9, 1991 decision and May 21, 1991 order;

(ii) that the decision in Charney v. Herskowitz 689 So.2d 1101 (Fla. 3d DCA 1997) could not rely on Delibert's June 6, 1995 affidavit because it was false;

(iii) that the reversal of the November 2, 1995 Final Judgment was procured by Charney and Delibert by fraud on the court and so that 1995 Final Judgment was and remains in full

force and effect;

(b) enjoining Judge Schwartz, Judge Green and Judge Goderich from adversely influencing and/or exerting any pressure on any judge of the Dade County Circuit Court or of the Third District or of any other State or Federal court not to hear Judith Herskowitz or not to give her an evidentiary hearing or a trial on the additional New York documents and on any other evidence supporting that Delibert's June 6, 1995 affidavit was false;

(c) enjoining Judge Schwartz, Judge Green and Judge Goderich and all other persons acting through or under Judge Schwartz, Judge Green and Judge Goderich or any of the other Defendants Delibert, Charney and Bezner and their agents, successors or fiduciaries from using the decision in Charney v. Herskowitz 689 So.2d 1101 (Fla. 3d DCA 1997) to bar Judith Herskowitz on the premise that the Third District determined that personal jurisdiction over the Herskowitzes was decided by the Supreme Court of New York:

(d) enjoining Judge Schwartz, Judge Green and Judge Goderich from preventing any court from considering the above referred to issues, on the basis that any adverse ruling would be reversed or would not be upheld by the Third District; and from any other activity tending to obstruct justice relevant to Judith Herskowitz seeking a resolution of the above stated issues.

For such other and further relief as shall be appropriate together with the costs and disbursement of this action, and shall seem proper in the premises.

Plaintiff requests an advisory jury.

### **COUNT III**

### **CIVIL CONSPIRACY**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually

and as trustee for North Jersey Trading Corporation and alleges as follows:

195. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185.

196. Delibert, Charney and Bezner, worked in consensus to achieve a single objective and had an agreement on the object of course of action to wit: to secure judgments against the Herskowitzes in the Supreme Court of New York; to uphold those judgments based on what Delibert, Charney and Bezner knew were false claims of personal jurisdiction; to use the void, bogus New York default judgments in excess of four million dollars, to defraud the Herskowitzes of all their interest in North Jersey and of other assets without allowing them to defend; to seize control of the valuable real property of North Jersey; and to obstruct North Jersey from paying off its creditors; so as to liquidate its real property, to provide cash in excess of a million dollars for fabricated fees for Bezner, Delibert and others, of which to outright embezzle around \$700,000.00 for personal enrichment.

197. To achieve the aforementioned shared objective, Delibert, Charney and Bezner engaged personally or through their agent in *ex parte* communications on the merits with judicial officers; procured *ex parte* orders on the merits without notice and hearing to Judith Herskowitz; and acted in total disregard of applicable rules and laws as set forth more fully herein. Delibert and Charney maligned the Herskowitzes with false claims of mismanagement and other wrongs to procure the bogus, void New York derivative judgments without according the Herskowitzes their day in court.

198. When finally the Herskowitzes were granted by the Dade County Circuit Court a Final Judgment denying full faith and credit on the New York judgments for lack of personal jurisdiction, then Charney procured the reversal of that judgment in the Third District Court of Appeal based on

Delibert's affidavit which they knew to be false.

199. Charney and Delibert supported by Bezner entered into an illegal and unlawful settlement agreement with Robert and Xxxx Herskowitz providing for the vacatur of the New York judgments instead of the required satisfaction of the judgment to defraud North Jersey and Judith Herskowitz a majority shareholder of North Jersey, even from that remainder \$700,000.00.

200. As a direct and proximate cause of the unlawful acts perpetrated by Delibert, Charney and Bezner acting in concert, Judith Herskowitz has suffered substantial damages including the moneys that she had to spend over the past fourteen years to defend herself against Delibert's, Charney's and Bezner's false claims.

201. In that Delibert, Bezner and Charney deliberately and maliciously pursued this course of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff prays for the entry of judgment against the Defendants Charney, Delibert and Bezner jointly and severally, for all allowable elements of damages including, but not limited to, compensatory and punitive damages in an amount in excess of Ten million (\$10,000,000) Dollars and for reasonable fees and costs of this action.

Plaintiff demands trial by jury.

#### **COUNT IV**

#### **CONVERSION**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

202. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs

2 through 185 and 195 through 201 of the Complaint.

203. At all times material hereto North Jersey, a closed family corporation was the true owner of the real property located at 200 Riverside Drive New York City.

204. Following the death of Alex Fried in March 1992 Plaintiff, a majority shareholder of North Jersey and as the controlling shareholder had the right to conduct the business of North Jersey and to share in the income and profits of North Jersey.

205. Delibert, Charney and Bezner have intentionally and maliciously converted the real property of North Jersey and destroyed North Jersey as a going concern with reckless disregard to the rights of Judith Herskowitz.

206. The potential lenders secured by the Herskowitzes to provide funds to pay claims of creditors and for repairs on the real property of North Jersey and for other necessities was rejected by Bezner so that she could liquidate the real property of North Jersey to convert all the remaining funds in excess of one million dollars for her fees and of others and for her personal benefit of which about \$700,000.00 was openly, brazenly embezzled.

207. As a direct and proximate cause of the acts of Delibert, Charney and Bezner Judith Herskowitz has suffered substantial damages from the loss of the real property of North Jersey which on a forced sale without an appraisal was sold for Three Million (\$3,000,000.00) Dollars and whose real value could have been doubled and tripled if the Herskowitzes were not obstructed with the plan of co-op conversion, or with the renting of the vacant apartments at "market" together with improvements such as construction of penthouse apartments with river view in the upscale neighborhood on the West Side of Manhattan. Judith Herskowitz suffered other damages including the moneys that she had spent over the past fourteen years to defend herself against Delibert's, Charney's and Bezner's baseless claims.

208. In that Defendants Delibert, Bezner and Charney deliberately and maliciously pursued this course of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff prays for the entry of judgments against Charney, Delibert and Bezner jointly and severally, for all allowable elements of damages including, but not limited to, compensatory and punitive damages in an amount in excess Ten million (\$10,000.000) Dollars with interest and for reasonable fees and costs of this action.

Plaintiff demands trial by jury.

### **COUNT V**

#### **WASTE, EMBEZZLEMENT AND STATUTORY LARCENY**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

209. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 208 of the Complaint.

210. The acts of Delibert, Charney and Bezner herein described also constitutes waste and mismanagement of fiduciary real property, and of fiduciary assets for which they are personally liable for intentionally, knowingly and without justification causing the injuries complained of, and Delibert's, Charney's and Bezner's acts further constitute larceny and embezzlement under provisions of Section 812.021 of Florida Statutes.

211. Bezner as the alleged court appointed trustee has breached her fiduciary duty as set forth more fully in this complaint.

212. In that Defendants Delibert, Bezner and Charney deliberately and maliciously pursued this course of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff prays for the entry of judgment against Delibert, Charney and Bezner jointly and severally, for all allowable elements of damages, threefold the actual damages sustained, punitive damages, fees and costs in accordance with Section 812.021, 733.609 and 733.619 of Florida Statutes in excess of Ten Million (\$10,000.000) Dollars.

Plaintiff demands trial by jury.

### **COUNT VI**

#### **R.I.C.O. VIOLATION AND CONSPIRACY 18 U.S.C. §1961, et seq.**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

213. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 212 of the Complaint.

214. Defendants Delibert, Charney and Bezner as persons employed by or associated with an enterprise engaged in the activities which affected interstate and foreign commerce, did conduct and participate, directly and indirectly, in the conduct of such enterprise's affairs, though a pattern of racketeering activity, as defined in Title 18, United States Code, Section 1961(1)(A)(B), to wit; in the act of bribery, extortion, embezzlement, mail and wire fraud and obstruction of justice all in repeated violation of both Federal and State law as set forth in great detail above.

215. Each individual Defendant named herein is a "person" within the meaning of 18 U.S.C. §1961(3).

216. Delibert, Bezner and Charney together constituted an "association in fact" enterprise within the meaning of 18 U.S.C. §1961(4) which consisted not only of Delibert, Charney and Bezner pursuing a course of action in State and Federal Court, but who used the courts abusively as a "star

chamber” to terrorize the Herskowitzes with their lawless acts and in addition acted in concert and conspiracy with immune judicial officers.

217. Delibert, Charney and Bezner knowingly and intentionally obstructed justice with a perjured affidavit sworn to by Delibert on June 6, 1995 and with other false claims while preventing Judith Herskowitz from testifying on these activities and to introduce into evidence documentary proof before a judicial tribunal. Charney and Delibert supported by Bezner entered into a private agreement i.e. the December 1998 so-called Settlement Agreement upon which to extort \$150,000.00 from xxx and xxx Herskowitz and set out to extort moneys from Judith Herskowitz as well. The remaining funds of North Jersey of around \$700,000.00 which rightfully belonged to North Jersey and in which Judith Herskowitz as a majority shareholder had an interest was openly embezzled.

218. For the purpose of executing the aforementioned scheme and artifice to defraud and to obtain money and property by false and fraudulent misrepresentations, pretenses and promises Delibert, Charney and Bezner, did knowingly cause to be delivered by the United States Postal Service by mail correspondence to the directions thereon and also contacted Judith Herskowitz and third parties through wire services.

219. The acts of the individual Defendants Delibert, Charney and Bezner as set forth herein constitute repeated and continuing conduct that was neither isolated nor sporadic, but involved a callous disregard for the law over a period of years.

220. As a direct and proximate cause of the acts of Delibert, Charney and Bezner the real property of North Jersey has been wasted away and Judith Herskowitz has been injured in her business and property, by Defendant’s violation of the RICO Statute (18 U.S.C. 1962) as alleged herein. By reason of said injuries to Judith Herskowitz, she is entitled to recover threefold the

damages she has sustained set forth herein above, together with the costs of bringing this suit, and a reasonable attorneys' fee, pursuant to 18 U.S.C. § 1964(c).

WHEREFORE, Plaintiff requests this Court enter judgment in her favor and against Defendants Delibert, Charney and Bezner jointly and severally for all allowable elements of damages, threefold the actual damages sustained, as called for in 18 U.S.C. § 1964 and punitive damages in excess of Ten Million (\$10,000,000) Dollars together with interest, costs and fees of this action.

Plaintiff demands trial by jury.

## **COUNT VII**

### **REPLEVIN**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

221. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 220 of the Complaint.

222. Judith Herskowitz seeks to recover possession of the real property of North Jersey located at 200 Riverside Drive New York County, State of New York. The description of the property is

“ALL THAT CERTAIN plot, piece, or parcel, or parcel of land, with the buildings and improvements thereon enacted, situate, lying and being in the borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of 92<sup>nd</sup> Street and the easterly side of Riverside Drive; running thence EASTERLY along the northerly side of 92<sup>nd</sup> Street, 150 feet; thence NORTHERLY parallel with the westerly side of West End Avenue, 56 feet 11-1/2 inches to the southerly boundary

line of the Wayman Estate, 153 feet 10-3/8 inches to the easterly side of Riverside Drive, 61 feet 7 1/2 inches more or less to the corner, at the point or place of BEGINNING.

To the best of Judith Herskowitz's knowledge, information and belief the value of the real property is around Ten Million (\$10,000,000.00) Dollars.

223. Under a deed dated December 3, 1958 Judith Herskowitz through North Jersey was entitled to possession of the real property located at 200 Riverside Drive New York City.

224. The real property was wrongfully sold by Ms. Bezner as purported trustee for North Jersey having been appointed pursuant to the bogus, void New York judgments.

WHEREFORE, Plaintiff demands judgment for possession of the above described real property of North Jersey, for an accounting of the lost rental income together with reasonable fees and costs of this action.

Plaintiff demands trial of all issues triable as of right by jury.

### **COUNT VIII**

#### **ABUSE OF PROCESS**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

225. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 224 of the Complaint.

226. Delibert, Charney and Bezner knowingly, willfully, maliciously and wrongfully used and perverted the aforementioned processes of the New York and Florida State courts and of the New Jersey Bankruptcy Court to obtain collateral purposes not obtainable under the law.

227. The unlawful purposes Delibert, Charney and later joined by Bezner intended to accomplish and were enabled to carry out were as follows:

(a) to force the Herskowitzes to litigate outside their domiciliary state in the distant New York courts, with full knowledge they were not amenable to long-arm jurisdiction of those courts;

(b) to maintain in force an unauthorized notice of lis pendens by Charney and Delibert casting a cloud upon the real property of North Jersey and impairing the credit of North Jersey;

(c) to so paralyze and prejudice the operations of North Jersey as to render the corporation unable to meet its mortgage obligations and to secure conventional refinancing;

(d) to seize control of North Jersey by confiscating all of the issued and outstanding stock certificates of North Jersey, via ex parte applications to the court, warrants of arrest, harassment, intimidation and receivership;

(e) to confiscate the entire real property of North Jersey for the personal benefit of Defendants, Delibert, Charney and joined at a later date by Bezner; and

(f) to steal and extort moneys from the Herskowitzes under the void, bogus New York judgments.

228. Among the processes that were thereby abused were;

(a) The regularly issued processes (formal notice) in the Circuit Court Dade County, Florida incompetency and guardianship proceeding;

(b) Charney's aforementioned post-judgment, ex parte procurement of an order requiring the surrender of all of shares of stock of a value far in excess of those sanctions to satisfy a void judgment;

(c) the regularly issued (formal notice) in the Circuit Court Dade County Florida to commence Charney's cases to domesticate her void New York judgments; and

(d) the regularly issued subpoenas from various courts.

229. As a direct and proximate cause of the acts Delibert, Charney and Bezner, the value of Judith Herskowitz's stock was totally wiped out, she was deprived to even share in the North Jersey surplus of \$700,000.00, she suffered substantial damages and was forced to incur substantial legal fees and costs in the defense of the various proceedings.

230. In that Defendants Delibert and Charney deliberately and maliciously pursued this course of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff prays for the entry of judgment against Charney, Delibert and Bezner jointly and severally, for all allowable elements of damages including, but not limited to, compensatory and punitive damages in an amount in excess of Ten Million (\$10,000,000) Dollars together with interest, reasonable fees and costs of this action.

Plaintiff demands trial by jury.

### **COUNT IX**

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually and as trustee for North Jersey Trading Corporation and alleges as follows:

231. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 230 of the Complaint.

232. Trough the willful misconduct set out hereinabove, Delibert, Charney and Bezner intentionally, recklessly and maliciously inflicted upon Judith Herskowitz severe emotional and physical distress.

233. All of the foregoing intentional unlawful reckless and malicious acts complained of

herein were intentionally designed and purposefully intended by Defendants to expose Judith Herskowitz to great emotional distress. Delibert, Charney and Bezner's objective was to harass and vex Judith Herskowitz and to deprive her of her property and rights.

234. The foregoing wrongful acts of Delibert, Charney and Bezner were done intentionally, willfully, recklessly and with total disregard for the physical and emotional health, tranquility, welfare and well being of Judith Herskowitz and directly resulted in injury, harm and damage thereto and a diminishment of Judith Herskowitz's enjoyment of life.

235. As a direct and proximate cause of the acts of Delibert, Charney and Bezner described herein Judith Herskowitz has been damaged and has suffered from high blood pressure, colitis, depression, anxiety, loss of sleep and appetite, loss of emotional tranquility, recurring nightmares, lowered self esteem, humiliation, embarrassment, lack of energy, headaches, stomachaches and other damages and will continue to suffer such damages in the future.

236. In that Delibert, Bezner and Charney deliberately and maliciously pursued this course of conduct, they are further liable individually and severally for punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants Delibert, Charney and Bezner jointly and severally, for all allowable elements of damages including, but not limited to, compensatory and punitive damages, in excess of Ten Million (\$10,000,000) Dollars together with interest, the fees and costs of this suit.

Plaintiff demands trial by jury.

### **COUNT X**

#### **RESCISSION OF CONTRACT VOID FOR ILLEGALITY**

Plaintiff sues Defendants Steven Delibert, Susan Charney and Karen E. Bezner individually

and as trustee for North Jersey Trading Corporation and alleges as follows:

237. Plaintiff realleges and incorporates by reference as if set forth fully herein Paragraphs 2 through 185 and 195 through 236 of the Complaint.

238. The so-called Settlement Agreement dated December 1998 entered into by the Defendants Charney and Delibert with Robert and xxx Herskowitz fully supported and endorsed by Defendant Bezner is void because it calls for the performance of an illegal and unlawful act namely, that all of the New York judgments be vacated as to Robert and xxx Herskowitz as condition of settlement for the payment of \$150,000.00.

239. The above is contrary to the established public policy of the State of New York, prohibiting to vacate judgments by agreement of parties as condition of settlement on payment of money. Under N.Y. CPLR 5020, Bezner upon receipt of the settlement funds was required to file with the proper court a satisfaction piece and to serve it on all the judgment debtors.

240. Under New York law in a compromise after judgment with one of the joint tort-feasors, even if plaintiff accepted less than the full amount of the judgment but, the settlement was paid as full satisfaction of the judgment the “plaintiff’s judgment has been completely discharged”. No satisfaction of judgment was served on Judith Herskowitz, named as a joint tort-feasor with xxx and xxx Herskowitz and upon information none was filed by Bezner.

241. Delibert, Charney and Bezner avoided litigating the above issues in the proceedings for approval of the Settlement Agreement in the New Jersey Bankruptcy Court on pretext that Judith Herskowitz had no standing. Delibert, Charney and Bezner took the position that the New York law should be litigated in the New York court upon Bezner having transferred the funds to the New York receiver in Charney’s initial New York case, Index No. 24517/88 to which Judith Herskowitz was named as a defendant.

242. Delibert, Charney and Bezner schemed that illegal vacatur of the New York judgments to fraudulently deny the discharge of the New York judgments to Judith Herskowitz to utilize it as a pretext for removing the remaining \$700,000.00 from the Bankruptcy Court by a purported transfer to the New York receiver.

243. Delibert, Charney and Bezner have made false and misleading statements because there is nothing in the record and no papers were served on Judith Herskowitz in that New York Supreme Court case concerning the said funds, following the August 9, 2000 order of dismissal by the Bankruptcy Court.

244. Delibert, Charney and Bezner committed these acts intentionally, maliciously, and with reckless disregard for the likelihood of causing Judith Herskowitz severe emotional distress with the singular objective to further Delibert's, Charney's and Bezner's own economic interests, by defrauding North Jersey of its assets and Judith Herskowitz as a majority shareholder, of her rightful share in the remaining funds of North Jersey, destroying her financially and injuring her mental health and well being.

245. As a further direct and proximate cause of the acts of Delibert, Charney and Bezner Judith Herskowitz has incurred attorneys' fees, costs and expenses and other special damages in an amount yet to be determined.

246. In order to deter similar conduct by Delibert, Charney and Bezner in the future, and to prevent the repetition of his conduct, Judith Herskowitz requests punitive damages to be awarded.

WHEREFORE, Plaintiff demands judgment against Defendants Delibert, Charney and Bezner jointly and severally, for all allowable elements of damages including, but not limited to, compensatory and punitive damages, in excess of Ten Million (\$10,000,000.00) Dollars together with interest, the fees and costs of this suit.

Plaintiff demands trial by jury.

Under penalties of perjury, I Judith Herskowitz, declare that I have read the foregoing complaint and that the statement of facts contained therein are true and correct.

Executed on August 8, 2002.

By: \_\_\_\_\_  
JUDITH HERSKOWITZ

Respectfully submitted,

JUDITH HERSKOWITZ J.D.  
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Miami Beach, Fl. 33140  
Tel: (305) 534-7600

By: \_\_\_\_\_  
JUDITH HERSKOWITZ