

**Judith Herskowitz**  
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October 17, 2005

Hon. Sherry Klein Heitler  
Supreme Court  
60 Centre Street,  
Room 438  
New York, N.Y. 10007

Re: Charney v. North Jersey et al.,  
Index No. 24517/88  
Index No. 23002/92

Dear Justice Heitler:

Enclosed please find the following: Motion by Judith Herskowitz, to Vacate Injunction in the June 8, 2005 order requiring court approval for filing papers and Memorandum in Support and Reply Affidavit and Memorandum to Paul Windels' Opposition to Cross Motion to Vacate and Renew.

I therefore request permission to file the enclosed papers, in compliance with Your Honor's directive of June 8, 2005 and request the right to be heard upon these matters for the reasons stated herein. First, with respect to my motion to vacate injunction, CPLR § 6314 governs. It states:

"...A defendant enjoined by a preliminary injunction may move at any time, on notice to the plaintiff, to vacate or modify it. ..."

Second, with respect to Mr. Windels' moving papers for "final accounting" and my cross-motion in opposition thereto, CPLR §1216c(c) governs. It states:

"Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court."

In acknowledged reliance upon your Honor's injunction of June 8, 2005, which Mr. Windels construes as an injunction not limited to motions but against my right to file any papers at all, including opposing affidavits and memoranda, he did not set his motion for final accounting for hearing, believing likewise that your Honor's injunctive order also means that it should be granted unopposed and ex parte. However, as your Honor can see from the text of CPLR §1216(c), recited above, this is not the authorized means to grant approval of Mr. Windels' accounting under the procedures for a final accounting upon which Mr. Windels is

relying.

Finally, I call your Honor's attention to your Honor's motion practice instructions stated in the transcript of hearing on June 21, 2004, at page 27, lines 11-24, as follows:

"...I want to make one thing clear to everybody sitting at the table. ... want to make it very clear that everything to be done in this case needs to be done formally, which means either by notice of motion or by an order to show cause."

" Therefore, I also want everybody to understand the rules of this court are that if it's an order to show cause, clearly in the order to show cause it gives a date to come back. If its by notice of motion, we give you a date to come in and to argue. No papers in this courtroom are submitted without oral argument."

Plainly, Mr. Windels has not complied with those specific instructions regarding settling his motion for final accounting for hearing, upon which I am entitled to an evidentiary hearing in accordance with the statutory procedures noted above.

Sincerely,

Judith Herskowitz

cc: Paul Windels  
Susan Charney