

**A-183**  
**NOTICE OF MOTION OF SUSAN CHARNEY FOR ABSTENTION IN THE**  
**BANKRUPTCY COURT DATED JULY 18, 1996**

Robert W Abrams (RA 2898)  
55 State Street  
Hackensack, N.J. 07601  
(201)487-7500

Steven Delibert (SD 0207)  
277 Broadway  
New York, N. Y. 10007  
(212)267-7183  
ATTORNEYS FOR SUSAN CHARNEY

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_X Case No. 93-31620-SAS  
In re Chapter 11  
NORTH JERSEY TRADING CORPORATION,  
Debtor. Hearing Date Aug. 12, 1996  
Oral Argument Requested  
\_\_\_\_\_X

**NOTICE OF MOTION BY SUSAN CHARNEY FOR**  
**ABSTENTION, FOR ORDER DIRECTING TRUSTEE TO**  
**COMPLETE ADMINISTRATION AND DISBURSE SURPLUS**  
**TO RECEIVER, AND FOR FURTHER RELIEF FROM STAY**

PLEASE TAKE NOTICE, that on the annexed Affidavit of Steven Delibert, Esq., sworn to July 18, 1996, and the exhibits annexed thereto, and on such testimony and documentary evidence, if any, as may be adduced at the hearing, the undersigned will move this Court on August 12, 1996, at 9:00 am, or as soon thereafter as counsel may be heard, before the Honorable Stephen A. Stripp, United States Bankruptcy Judge, at the United States Courthouse, 402 East State Street, Trenton, N. J., for an order:

1. Determining that the Court will permanently abstain from attempting to resolve any issue as to the ownership of equity security interests in Debtor;

2. Directing the Trustee heretofore appointed herein, to resolve expeditiously by settlement or by motion to this Court, R

any and all remaining outstanding creditors' claims and expenses of administration of this case, including the compensation to be paid to said Trustee;

3. Directing the said Trustee to pay over any and all sums which may thereafter remain in the Debtor's estate, to the Receiver of the assets of North Jersey Trading Corporation heretofore appointed by the Supreme Court of the State of New York, County of New York;

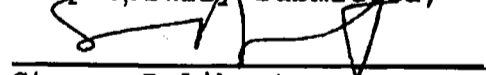
4. Modifying the court's order entered August 5, 1994, by granting further relief from the automatic stay;

5. Discharging the Trustee and closing the case pursuant to Code §350(a);

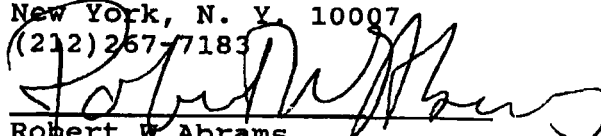
6. Awarding to Susan Charney such other and further relief as may to the Court appear just and proper.

Dated: July 18, 1996

Respectfully submitted,



Steven Delibert  
277 Broadway  
New York, N. Y. 10007  
(212) 267-7183



Robert W. Abrams  
55 State Street  
Hackensack, N.J. 07601  
(201) 487-7500  
Attorneys for Susan Charney

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that on July 18, 1996, I served copies of the within Motion and supporting papers on the parties named on the annexed service list.

July 18, 1996



Darlene Harris

**A-185**  
**AFFIDAVIT OF STEVEN DELIBERT COUNSEL FOR CHARNEY IN SUPPORT OF**  
**MOTION FOR ABSTENTION IN THE BANKRUPTCY COURT, DATED JULY 18, 1996**

Robert W Abrams (RA 2898)  
 55 State Street  
 Hackensack, N.J. 07601  
 (201)487-7500

Steven Delibert (SD 0207)  
 277 Broadway  
 New York, N. Y. 10007  
 (212)267-7183  
 ATTORNEYS FOR SUSAN CHARNEY

UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEW JERSEY

In re	X	Case No. 93-31620-SAS
NORTH JERSEY TRADING CORPORATION,		Chapter 11
Debtor.		Hearing Date Aug. 12, 1996 Oral Argument Requested

**AFFIDAVIT IN SUPPORT OF MOTION BY SUSAN CHARNEY**  
**FOR ABSTENTION, FOR ORDER DIRECTING TRUSTEE TO**  
**COMPLETE ADMINISTRATION AND PAY OVER SURPLUS TO**  
**RECEIVER, AND FOR FURTHER RELIEF FROM AUTOMATIC STAY**

STATE OF NEW YORK    )  
                                   )SS.:  
 COUNTY OF NEW YORK    )

Steven Delibert, being duly sworn, deposes and says:

1. I am the attorney for Susan Charney movant herein; and I respectfully submit this affidavit in support of the within Motion by Susan Charney, for abstention; for an order directing the Trustee to complete the administration of this case, and pay out any remaining proceeds to the Receiver of the debtor's assets, heretofore appointed by the Supreme Court of the State of New York, County of New York; and for further relief from the automatic stay.

**Background.**

2. Susan Charney is a minority shareholder of Debtor North

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and receive any surplus which might result from proceedings in this Court, subject to the further Orders of this Court.

12. At no time in the New York action, did North Jersey Trading Corporation or any other party raise any question of personal jurisdiction over the corporation, or of the validity of the personal service upon it, which was duly made through the New York Secretary of State pursuant to New York Business Corporation Law §304, governing foreign corporations authorized to do business in New York.

13. Likewise, the Florida courts were never asked to rule, did not rule, and as shown in the accompanying memorandum, could not rule, as a matter of their own subject matter jurisdiction, on whether the New York court had jurisdiction over the New York property of this New Jersey corporation, authorized to do business in New York, in a New York action instituted by New York service of process by a New York citizen concerning activities alleged to have occurred in New York with respect to that very New York property.

**Abstention.**

14. There is accordingly nothing in the Florida proceedings, which raises any question as to the authority of the New York courts to have appointed a receiver over the New York property of the corporation. There is no occasion for this Court to choose between the decisions of the two states, insofar as they are in conflict; there is no occasion for this Court to attempt

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to determine the validity of the New York decision declaring Charney to be a shareholder, or for this Court to undertake, itself, to determine the identity of the shareholders, or to wait for some other court to do so. As shown in the accompanying memorandum of law, this Court should determine to abstain from undertaking any such unnecessary decision.

Disbursal of Surplus to Receiver.

15. As likewise shown in the accompanying memorandum, in the ordinary case, the Court at the conclusion of administration, should properly return any remaining surplus to the Debtor or its principals; here, where there is no undisputed controlling body of the Debtor, and the Debtor's principals could not be determined without extensive further litigation which does not belong in this Court, the appropriate resolution is to return the surplus to the existing state-court receiver, so the case in this Court may be concluded and the Trustee discharged.

Further Relief from Automatic Stay.

16. This Court's Order entered August 5, 1994 (Exhibit B hereto), which granted Charney the authority to pursue collection of the New York derivative action judgment, contained the express and specific proviso:

"PROVIDED THAT, any sums which may be realized or recovered on behalf or in the name of the Debtor or its Estate, shall be forthwith delivered to the Trustee

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named and appointed herein; . . . "4/

17. Charney requests modification of the August, 1994, Order, by deletion of this proviso, so as to permit any funds realized by enforcement to remain in the hands of the New York receiver, pursuant to the Order of New York Supreme Court of November 24, 1995 (Exhibit E), subject to further order of that court.

18. The reason for the proviso, at the time this Court's August, 1994, Order was entered, was clear: The administration of the case was still at a relatively early stage; no creditors had been paid; the controlling faction of debtor's shareholders were promising, but had not yet proposed, the first of their plans of reorganization; all parties and the Court were of the belief that if the debtor were liquidated, there would be a substantial deficiency.<sup>5/</sup> If any sums were realized on behalf of

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<sup>4/</sup> No funds have yet been recovered by Charney, so as to require invocation of this proviso. The Florida courts' refusal to give full faith and credit to the New York judgment has prevented any significant collection activity in Florida; while in New York, the sole substantial asset located, a contract in favor of Robert Herskowitz to purchase a valuable co-op apartment for a vastly reduced "insider" price, is subject to litigation between Herskowitz and the co-op sponsors, and has not yet been realized upon. It is nevertheless anticipated that the extended internecine litigation regarding the apartment may be resolved in the near future, and the value of these "insider" rights be realized upon, to the extent of at least several hundred thousand dollars.

<sup>5/</sup> Even by early 1995, it was believed that the debtor's only asset, the Manhattan multiple dwelling, would bring little over \$2,200,000.00 if sold; the September, 1995, sale price of nearly \$3,000,000.00 came as a pleasant surprise for all parties, and the difference accounts for virtually the entire surplus of approximately \$800,000.00 now in the hands of the Trustee.

the Debtor, there was every reason to believe they might well be required to satisfy debts and administrative expenses.

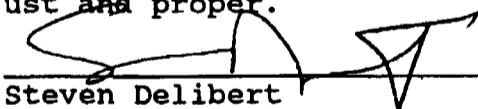
19. The facts have now changed substantially. The significant debts -- primarily, the mortgages -- and many administrative expenses have been paid, and the remaining claims and anticipated administrative expenses, even if paid in full, would account for barely half the cash now in the hands of the Trustee. Clearly, there is no reason now for this Court to intrude itself further in the state court litigation; there is no likelihood that the proceeds thereof, if any, will be needed to satisfy the debtor's obligations or the expenses of administration herein; there is no reason for this Court to burden itself with still further assets of the debtor, whose ultimate disposition could only embroil this Court still further in the disputes between the factions of shareholders and the state courts of New York and Florida.

20. The Herskowitzes will doubtless argue that granting this branch of the within motion, would constitute an impermissible refusal to accord full faith and credit to the Florida judgment which held the New York judgment void, but it would in fact be the exact opposite, and would in fact be just what the Herskowitzes have earlier said all along they wanted: Refusal by this Court to involve itself in the dispute between the courts of New York and Florida, or in the dispute between the factions of shareholders; refusal to allow this Court's processes to be used

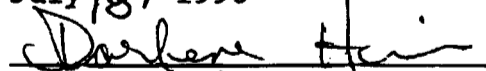
to manipulate state-court litigation; and instead leaving the parties exactly as they were, before the Herskowitzes caused the debtor to invoke this Court's jurisdiction.

21. No prior application has been made to this or any other Court for any part of the relief sought herein.

WHEREFORE, it is respectfully requested that the within application be granted, and an order be issued determining that this Court will abstain from attempting to identify the Debtor's equity shareholders; directing the Trustee to take the necessary steps to complete the balance of the administration hereof; directing the Trustee to pay over any remaining surplus thereafter to the Receiver heretofore appointed by the Supreme Court of the State of New York; in the interim, granting further relief from the automatic stay; and awarding Charney such other and further relief as may to the Court appear just and proper.

  
Steven Delibert

Sworn to before me  
July 18, 1996


  
Notary Public

DARLENE HARRIS  
Notary Public, State of New York  
No. 24-4878945  
Qualified in Kings County  
Commission Expires April 8, 1997

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that on July 18, 1996, I served copies of the within Motion and supporting papers on the parties named on the annexed service list.

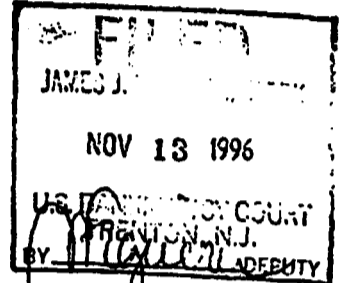
July 18, 1996

  
Darlene Harris

ORDER ON CHARNEY'S MOTION FOR ABSTENTION  
DATED NOVEMBER 13, 1996

KAREN E. BEZNER, ESQ.  
567 Park Avenue, Suite 103  
Scotch Plains, NJ 07076  
(908) 322-8484  
Attorney for Karen E. Bezner, Trustee

Karen E. Bezner  
KB 5770



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

In the Matter of:	:	In Voluntary Proceedings for
NORTH JERSEY TRADING CORPORATION,	:	Reorganization Under Chapter 11
Debtor(s).	:	of the Bankruptcy Code
	:	Hon. Stephen A. Stripp, U.S.B.J.
	:	Bankruptcy No. 93-31620
	:	ORDER ON MOTION OF SUSAN CHARNEY FOR ABSTENTION, FOR ORDER DIRECTING TRUSTEE TO COMPLETE ADMINISTRATION AND DISBURSE SURPLUS TO RECEIVER, AND FOR FURTHER RELIEF FROM THE AUTOMATIC STAY

This matter having been presented to the Court upon the motion of Susan Charney for abstention, for order directing Trustee to complete administration and disburse surplus to receiver, and for further relief from stay; and the Court having considered the Affidavit and Memorandum of Law submitted on behalf of Susan Charney in support of her motion, as well as the Affidavit, Memorandum of Law and Supplemental Memorandum of Law submitted by Judith Herskowitz in opposition to said motion, as well as the Memorandum of Law submitted in opposition thereto on behalf of Robert Herskowitz and Mark Herskowitz; and the Court having heard the arguments of counsel, Steven Delibert, Esq., appearing for Susan Charney; Clark Alpert, Esq., Alpert & Raice, P.C., appearing for Robert Herskowitz and Mark Herskowitz; Bruce Levitt, Esq.,

appearing for the debtor; Karen E. Bezner, Esq., appearing for the Trustee; David K. Fiveson, Esq., Butler, Fitzgerald & Potter, appearing; ~~Mark~~, appearing; and ~~Mark~~, Esq. and Judith Herskowitz appearing by telephone; and for the reasons set forth on the record of the hearing conducted on October 24, 1996 at 10:00 a.m.;\* and for good cause shown;

It is on this 13<sup>th</sup> day of <sup>Nov.</sup> ~~October~~, 1996

ORDERED that:

1. That portion of Susan Charney's motion which requests this Court to permanently abstain from attempting to resolve any issues pertaining to the ownership of equity security interests in the debtor be and the same is hereby granted as unopposed by any party.

2. That portion of Susan Charney's motion which seeks entry of an order directing the Trustee to complete her administration of this estate expeditiously be and the same is hereby denied as unnecessary.

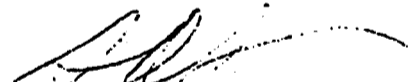
3. That portion of Susan Charney's motion which seeks entry of an order directing the Trustee to pay over any surplus remaining in this estate to the receiver of the property of North Jersey Trading appointed by the Supreme Court of the State of New York, County of New York, be and the same is hereby adjourned, without date, for further hearing in conjunction with the motion by Judith Herskowitz for full faith and credit, upon conclusion of the appeal filed by Susan Charney from the final judgment of the Circuit Court of the 11th Judicial Circuit of Dade County, Florida entered on

\* and the court having considered the Herskowitz objection per letter of Nov. 6, 1996 to the form of this order, and having determined that the objection is without merit;

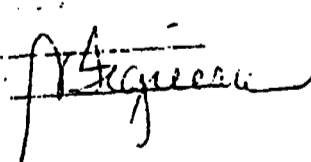
November 6, 1995 in the proceedings entitled Judith Herskowitz, et. al. v. Susan Charney, Case Nos. 94-472, 94-2887, and 94-5714, and Susan Charney v. North Jersey Trading Corporation, et. al., Case Nos. 93-22964, 94-669 and 94-3614; or such other date as is directed by the Court.

4. That portion of Susan Charney's motion which seeks modification of this Court's Order of August 5, 1994 granting further relief from the automatic stay, so as to delete the direction in the second ordering paragraph of that Order that sums recovered by Susan Charney on behalf of the estate be delivered to the Trustee, is granted.

5. That portion of Susan Charney's motion which seeks entry of an order discharging the Trustee and closing the case pursuant to 11 U.S.C. §350(a) be and the same is hereby denied.

  
Stephen A. Stripp, U.S.B.J.

Served  11/14/96

11/14/96 

PLEASE RETURN COPIES OF THIS ORDER  
ON ALL SUBSEQUENT PAGES TO THE CLERK

**A-194** FILED  
**EXCERPT OF TRANSCRIPT OF PROCEEDING IN BANKRUPTCY COURT ON**  
**AUGUST 3, 1994** LDRON

1 UNITED STATES BANKRUPTCY COURT U.S. BANKRUPTCY COURT  
2 FOR THE DISTRICT OF NEW JERSEY TRENTON  
3 BY Stumpack DEPUTY

4 In Re: No.: 93-31620  
5 NORTH JERSEY TRADING CORP. Trenton, New Jersey  
6 Debtor, 8-3-94

7  
8  
9 TRANSCRIPT OF MOTIONS  
10 BEFORE HONORABLE STEPHEN A. STRIPP  
11 UNITED STATES BANKRUPTCY JUDGE

12 A P P E A R A N C E S:

13 For the Debtor: Mudge, Rose  
14 By: BRUCE LEVITT, ESQUIRE  
15 1 Upper Pond Road, Building D  
Parsippany, New Jersey  
16 For the Trustee: KAREN E. BEZNER, ESQUIRE  
17 567 Park Avenue  
Scotch Plains, New York  
18 Audio Operator: GERALDINE MACK, C.E.R.  
19

20 Proceedings recorded by electronic sound recording, transcript  
21 produced by transcription service.

22  
23 J & J COURT TRANSCRIBERS, INC.  
24 116 Youngs Road  
Trenton, New Jersey 08619

25 (609) 586-2311 FAX NO. (609) 587-3599

1 permitting Ms. Charney to pursue those judgments, on behalf of  
2 the estate, and I'm going to permit her to do so.

3           Those other factors include first of all, that Mr.  
4 Delibert and his client have a substantial degree of knowledge  
5 regarding the matters in question, in the New York State Courts  
6 and in the Florida Courts, and regarding the defendants. Which  
7 the Trustee does not have.

8           And therefore, there would be a huge learning curve,  
9 for the Trustee to get up to speed, to a point where she could  
10 pursue those judgments with the same ability as Mr. Delibert  
11 and his client.

12           Secondly, Ms. Bezner makes a point about the costs of  
13 administration, which of course, is a valid concern to raise,  
14 however, Mr. Delibert hasn't sought leave to be retained by Ms.  
15 Bezner. And therefore, it appears to me that if, and only if,  
16 he and his client succeed in recovering something there, for  
17 the benefit of the estate, and if and only if, they make an  
18 application under code section 503B(3) I believe it is. B(3)  
19 and B(4), for rendering a substantial contribution to the case.

20           Would they, arguably have a basis for being compensated  
21 by the estate, for their services. So essentially, they're  
22 proceeding at their own cost and at their own risk, relative to  
23 any reimbursement potential by pursuing the subject actions in  
24 Florida.

25           Lastly, I note with respect to that that all parties

1 a 1.9 million dollar purchase. And the unsecured creditors,  
2 \$84,000 before -- before you got to administration. So even if  
3 you eliminate the unsecured creditors, and put in that place,  
4 the administration of \$99,000 it takes 2.1 million dollars to  
5 pay off, assuming a purchase of 1.9 million dollars.

6 If you have a bid of 2.1 million dollars, then the  
7 capital gains and everything else has gone up, so the upset  
8 price is the consequence -- perhaps should be higher than the  
9 2.1 million dollars.

10 THE COURT: Well, if -- if you get a -- if all -- if  
11 the highest and best offer is 2.1 million, then I suspect  
12 administrative expenses are going to take a haircut in this  
13 case. That's what's going to happen Mr. Drexel.

14 But that's going to be our minimum bid. That's it.

15 MR. LEVITT: Thank you Judge.


16 MS. BEZNER: Thank you.

17 (Court adjourned.)

18 \* \* \* \* \*

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct transcript  
21 to the best of my ability from the record of proceedings in the  
22 above-entitled matter.

23  
24   
25 J & J COURT TRANSCRIBERS  
BY: PATRICIA C. DUPRE

DATED: September 21, 1994

**A-197**  
**EXCERPT OF APPLICATION OF CHARNEY FOR ATTORNEY FEES IN THE  
BANKRUPTCY COURT, DATED AUGUST 17, 1995**

Robert W Abrams (RA 2898)  
55 State Street  
Hackensack, N.J. 07601  
(201)487-7500

Steven Delibert (SD 0207)  
277 Broadway  
New York, N. Y. 10007  
(212)267-7183  
ATTORNEYS FOR SUSAN CHARNEY

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re	X	Case No. 93-31620-SAS
NORTH JERSEY TRADING CORPORATION,		Chapter 11
Debtor.		Hearing Date Sept. 11, 1995 Oral Argument Requested

**APPLICATION BY SUSAN CHARNEY FOR SECOND ALLOWANCE OF  
ATTORNEY'S FEES AND EXPENSES UNDER CODE §503(b)(4)**

The within Application of Susan Charney, by her attorney, Steven Delibert, Esq., pursuant to Bankruptcy Code §503(b)(4), respectfully shows the Court:

**Background.**

1. This is the second application in this case by Susan Charney for an allowance of attorney's fees and expenses under Code §503(b)(4). The first such application was for a portion of the services rendered by counsel from commencement of the case in March, 1993, through December, 1994; and a total of \$19,692.20 in fees and \$3,096.95 in expenses was awarded by Order dated March 20, 1995. The fees and expenses thus awarded have been paid by the Trustee. This application seeks compensation for services rendered and expenses incurred from January 1, 1995, through July 31, 1995, plus the preparation of this application itself in

Mudge, Rose, Guthrie & Alexander, for leave to withdraw as Debtor's counsel in the Bankruptcy Court, which could well have thrown this case into an inescapable procedural morass.

7. Matters for which compensation is not here sought, as not of direct benefit to the Estate or to the progress of the case, are primarily (i) Charney's unsuccessful motion for leave to commence an adversary proceeding for dissolution of the Debtor under New Jersey state law, and for appointment of a custodian; and (ii) Charney's continuing efforts to collect from the Herskowitzes, on the state court derivative action judgments in favor of the Debtor (except to the limited extent that those efforts were of direct interest to the Trustee, e.g., with regard to the Trustee's need for records to aid in financial reconstruction for gains tax purposes).

8. As on the prior application herein, no compensation is sought for the continuing efforts in numerous other courts, not only as to the collection activities in the New York and Florida courts, but also opposition to the Herskowitzes' frivolous action in the federal courts to stay further state court proceedings, which has continued to demand time and expense from counsel.

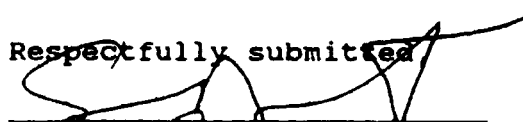
9. In the event that Charney is eventually successful, before the conclusion of this proceeding, in realizing any actual recovery on behalf of Debtor with respect to the derivative action judgments, the right is respectfully reserved to make application to this Court at that time for further compensation, in an

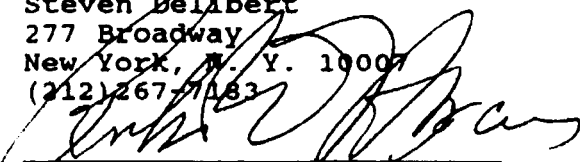
A-199

expenses in the sum of \$2,862.72, for a total allowance of \$27,172.72, and that she be granted such other and further relief as may to the Court appear just and proper.

Dated: August 17, 1995

Respectfully submitted

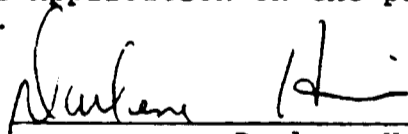
  
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(212) 267-7183

  
Robert W Abrams  
55 State Street  
Hackensack, N.J. 07601  
(201) 487-7500  
Attorneys for Susan Charney

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that on August 17, 1995, I served copies of the within Fee Application on the parties named on the annexed service list.

August 17, 1995

  
Darlene Harris

**A-200**  
**LETTER OPINION OF JUDGE STRIPP DATED MAY 2, 1997**

**UNITED STATES BANKRUPTCY COURT**  
DISTRICT OF NEW JERSEY  
402 EAST STATE STREET  
P.O. BOX 1568

STEPHEN A. STRIPP  
BANKRUPTCY JUDGE

TRENTON, NEW JERSEY 08607-1568

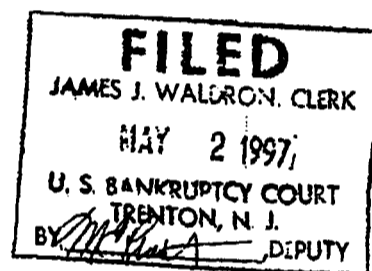
(609) 989-2017  
FTS - 489-2017

May 2, 1997

LETTER OPINION

Steven Delibert, Esq.  
277 Broadway  
New York, NY 10007

Re: North Jersey Trading Corporation  
Case No. 93-31620



Dear Mr. Delibert:

This is the Court's response to your motion for allowance of fees and expenses under Code section 503(b)(4) which is returnable on May 5, 1997. The Court has determined to rule on the papers as follows:

Code section 503(b)(4), read in conjunction with section 503(b)(3)(D), authorizes the court to allow compensation and reimbursement of expenses to an attorney for a creditor or equity security holder in a chapter 11 case where such professional makes a "substantial contribution" to the case. You haven't submitted a memo on the standards for determining "substantial contribution" in this Circuit, which you should have. The mere fact that such allowances may have been made by this Court before does not mean that they will continue to be made indefinitely.

Moreover, you note that one of the motions for which you seek such compensation was denied by this Court. It is difficult to understand how that could constitute a substantial contribution within the meaning of the subject standard. In addition, your client's challenges to the actions taken by the Herskowitzes in Florida to invalidate the New York judgment appear to be primarily for your client's benefit rather than for the benefit of the estate. Further explanation of your argument for substantial contribution on account of those services would therefore also be required.

Lastly, there is also force to the Herskowitzes' argument in their certification in opposition filed April 29, 1997 that this Court should wait until the Florida litigation is completed on all appeal levels before ruling on your motion. If the Florida Supreme Court were to reverse the appellate division, and reinstate the trial court's decision which determined that the Herskowitzes were not properly served in the New York action, your argument for "substantial contribution" would undoubtedly be weakened proportionately.

A-201

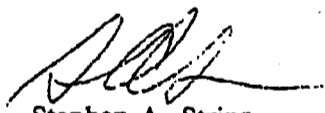
Page 2

LETTER OPINION of May 2, 1997  
Re: North Jersey Trading Corporation  
Case No. 93-31620

For these reasons, your motion is denied without prejudice to its renewal when the Florida action is final without further possibility of appeal. You are to submit an order to that effect under the five-day rule.

As for the Herskowitzes' argument that they were not served with the moving papers, Mr. Delibert's proof of service reflects that they were served at their addresses of record, and the Court notes that the Herskowitzes have made arguments in this case that they were not served on occasions too numerous to count. The credibility of their allegations of lack of service is, to say the least, highly suspect.

Very truly yours,

  
Stephen A. Stripp  
U.S. Bankruptcy Judge

SAS/mep

c: Karen Bezner, Esq.  
Judith Herskowitz  
| Robert  
| Mark

**A-202**  
**CERTIFICATION OF TRUSTEE KAREN BEZNER**  
**DATED NOVEMBER 24, 1999**

**KAREN E. BEZNER, ESQ.**  
567 Park Avenue, Suite 103  
Scotch Plains, NJ 07076  
(908) 322-8484  
Attorney for Karen E. Bezner, Trustee  
Karen E. Bezner, Esq.  
KB 5770

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

In The Matter of:	:	In Proceedings for Reorganization
NORTH JERSEY TRADING	:	under Chapter 11 the Bankruptcy
CORPORATION,	:	Code
Debtor(s).	:	Hon. Stephen A. Stripp, U.S.B.J.
	:	Bankruptcy No. 93-31620
	:	Return Date: December 18, 1999
		at 9:00 a.m.

CERTIFICATION OF KAREN E. BEZNER IN  
SUPPORT OF TRUSTEE'S MOTION TO  
CONCLUDE ADMINISTRATION AND DISMISS  
CASE

Karen E. Bezner, Trustee of North Jersey Trading Corporation,  
by way of Certification, states as follows:

1) I am the Trustee appointed in the above-referenced case.  
As such, I have direct knowledge of the facts contained in this  
Certification, and I am authorized to make this Certification on  
behalf of this estate.

2) I make this Certification in support of the Trustee's  
instant motion for an order, authorizing the Trustee to complete  
her administration of this estate, and dismissing this case  
pursuant to 11 U.S.C. §§305(a) and 1112(b).

3) All assets of the debtor, both tangible and intangible,  
have been liquidated, except for the debtor's claim against Judith  
Herskowitz as the remaining shareholder subject to judgment entered

**A-203**

in the State of New York in proceedings entitled Charney v. North Jersey Trading Corp., et.al., No. 24517/88 and related matters, and in related litigation pending in the state of Florida. The debtor's real property was sold, and the shareholder dispute was settled with claimants other than Ms. Herskowitz. All tax returns required by the Trustee's administration have been paid, all secured creditors have been paid in full, and administrative creditors are paid as allowed thus far by this Court.

4) The only creditors remaining unpaid are as follows:

--The law firm of Butler, Fitzgerald and Potter, whose claim was allowed in full upon denial of the Trustee's earlier motion to expunge or modify claims, to be paid at the time of distribution to unsecured creditors;

--The State of New York, Divisions of Taxation and Labor, the City of New York, and the Internal Revenue Service, whose claims are challenged by the Trustee pursuant to motion filed concurrently herewith;

--The estate of Lawrence McCready, whose claim is also challenged by the Trustee;

--administrative claims asserted by the Trustee, her counsel, and Bederson and Company, her accountants. Subject to allowance, these claims are estimated at \$ 138,000.00.

5) The Trustee currently holds the sum of \$868,077.38 in her Trustee account for this estate. Even assuming that none of the claims challenges filed by the Trustee were granted, there would be a substantial surplus of funds available to the shareholders of the

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debtor following payment of administrative and other creditors in full.

6) Upon allowance and payment of claims, there is no bankruptcy purpose served by the continued administration of this estate. The goals addressed by the filing of this voluntary Chapter 11 case have been achieved: foreclosure sale of the real property was averted, creditors have been, or will be, paid in full, and the shareholder litigation is largely settled. No true bankruptcy purpose remains for this Chapter 11 case after administrative and other creditors are paid. The surplus funds held by the Trustee will ultimately be distributed to the prevailing shareholder in the New York and Florida litigations, and Paul Windels, Esq. has been appointed receiver in the New York litigation and is available to hold the surplus funds pending conclusion of that litigation.

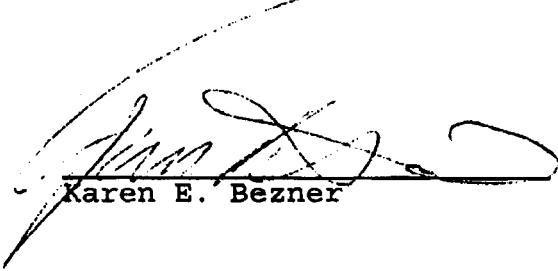
7) The Trustee's continued administration is expensive. In the ordinary course of her administration, the Trustee is required to file tax returns, with resulting administrative cost to the estate; pay quarterly U.S. Trustee fee; pay an annual bond premium; and otherwise continue to administer this estate. Prosecution of a plan and disclosure statement, with its attendant hearings on objections, will increase the cost of administration to the prejudice of all parties, and to no one's benefit, as all true bankruptcy objectives of this estate have been achieved. The Trustee desires to protect the surplus funds in her possession from further erosion, for the ultimate benefit of the prevailing

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shareholder.

8) Concurrently with the filing of the within motion, the Trustee has submitted her motion to expunge claims against the estate. Final fee applications have been requested from the Trustee's professionals. Upon conclusion of these matters, and payment to administration and other creditors, the Trustee seeks to conclude her administration by delivering the surplus funds to the New York receiver. There is no purpose to be served by continued administration, and the Trustee respectfully seeks dismissal of this case.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Karen E. Bezner

Dated: November 24, 1999

**A-206**  
**MEMORANDUM OF LAW OF CHARNEY IN THE BANKRUPTCY**  
**COURT DATED DECEMBER 10, 1999**

Robert W Abrams (RA 2898)  
55 State Street  
Hackensack, N.J. 07601  
(201)487-7500

Steven Delibert (SD 0207)  
277 Broadway  
New York, N. Y. 10007  
(212)267-7183  
ATTORNEYS FOR SUSAN CHARNEY

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_X  
In re  
NORTH JERSEY TRADING CORPORATION,  
Debtor.  
\_\_\_\_\_X

Case No. 93-31620-SAS

Chapter 11

Hearing Date Dec. 20, 1999  
Oral Argument Requested

**MEMORANDUM OF LAW BY SUSAN CHARNEY**  
**IN SUPPORT OF MOTION BY TRUSTEE TO DISMISS**

Statement of Facts

This Memorandum is respectfully submitted by shareholder Susan Charney in support of the Trustee's Motion for an Order directing dismissal of this case and payment of the surplus to the Receiver for North Jersey Trading Corporation heretofore appointed in New York derivative litigation affecting the debtor.

Charney fully ratifies and adopts the arguments submitted by the Trustee in support of her motion, and respectfully submits this memorandum in further support thereof, to demonstrate that a Receiver such as the one appointed herein is the proper recipient of any surplus.

**ARGUMENT**

**Surplus Funds Should be Paid to the New York Receiver.**

In the ordinary Chapter 11 case, after administration has been completed, any surplus is

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to be returned to the debtor. Code §1141(b); In re First Colonial Corp. of America, 693 F.2d 447, 450 (5th Cir. 1982), cert. denied, 461 U.S. 915, 103 S.Ct. 1896, 77 L.Ed.2d 285 (1983). In this respect as in every other, however, this is not the ordinary Chapter 11 case, and there is no ready means of determining the identity of the debtor, in light of the conflicting claims of factions of shareholders. Even after settlement of all disputes between Susan Charney and [REDACTED] and [REDACTED] Herskowitz, 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.

This Court, however, need not make that determination; where a state court with unquestioned jurisdiction over the corporation and its assets has appointed a receiver to take control of those assets, the bankruptcy court may complete its administration of the case, and direct the Trustee to pay over any surplus to the duly appointed state court receiver. In re First Colonial Corp. of America, 693 F.2d 447 (5th Cir. 1982), cert. denied, 461 U.S. 915, 103 S.Ct. 1896, 77 L.Ed.2d 285 (1983); Berl v. Crutcher, 60 F.2d 440 (5th Cir. 1932), cert. denied, 287 U.S. 670, 53 S.Ct. 314, 77 L.Ed. 578 (1932) (cited with apparent approval, In re North American Light and Power Co., 180 F.2d 975, 980 (3d Cir. 1950) (concurring opinion, Hastie, C.J.)).

In this case, there is such a receiver, duly appointed by the Supreme Court of the State of New York, and expressly authorized, inter alia, to receive any surplus remaining after the conclusion of proceedings in this Court.

This Court should complete the aspects of the case appropriate to bankruptcy administration, direct the Trustee to pay the surplus to the New York receiver; and close its file.

**CONCLUSION**

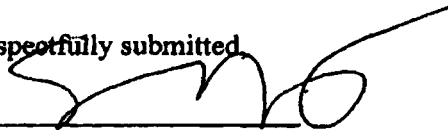
The trustee's motion should be granted. The Court should take such steps as are neces-

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sary to complete administration hereof; should order the Trustee to pay any surplus over to the New York receiver; and award such other and further relief as may to the Court appear just and proper.

Dated: December 10, 1999

Respectfully submitted,



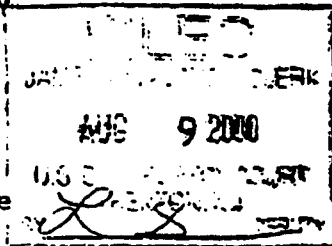
\_\_\_\_\_  
Steven Delibert (SD 0207)  
277 Broadway  
New York, N. Y. 10007  
(212)267-7183

Robert W Abrams (RA 2898)  
55 State Street  
Hackensack, N.J. 07601  
(201)487-7500

ATTORNEYS FOR SUSAN CHARNEY

A-209  
ORDER OF JUDGE STRIPP OF THE BANKRUPTCY COURT  
DATED AUGUST 9, 2000

KAREN E. BEZNER, ESQ.  
567 Park Avenue, Suite 103  
Scotch Plains, NJ 07076  
(908) 322-8484  
Attorney for Karen E. Bezner, Trustee



Karen E. Bezner, Esq.  
KB 5770

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

In The Matter of: : In Proceedings for Reorganization  
: under Chapter 11 the Bankruptcy  
NORTH JERSEY TRADING : Code  
CORPORATION, : Hon. Stephen A. Stripp, U.S.B.J.  
Debtor(s). : Bankruptcy No. 93-31620

ORDER GRANTING TRUSTEE'S MOTION TO  
CONCLUDE ADMINISTRATION AND DISMISS  
CASE AND DIRECTING TRANSFER OF FUNDS

This matter having been presented to the Court upon the motion of Karen E. Bezner, Trustee for an order, authorizing the Trustee to conclude her administration and to dismiss this Chapter 11 case; and for the reasons set forth in this Court's Memorandum Opinion *and the court having determined that the objections of Judith Werkschutz to this order, dated July 10, 2000, are without merit,* and for good cause shown;

It is on this 9th day of August, 2000

ORDERED THAT:

1) The Trustee's motion for authorization to conclude her administration of this Chapter 11 case be and the same is hereby granted.

2) This Chapter 11 case be and the same is hereby dismissed.

3) The Trustee shall forthwith deliver to Paul Windels, III, Esq., Receiver for North Jersey Trading Corp., all estate funds in

*\* And that none of the issues raised in Ms. Werkschutz's objections warrants any modification of the decision set forth in the Memorandum Opinion,*

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her possession, save only the interest-bearing escrow fund of \$13,975.00 established pursuant to Order dated June 12, 2000, over which this Court retains jurisdiction.

  
\_\_\_\_\_  
Stephen A. Stripp, U.S.B.J.

COPIES TO:  
LIST \_\_\_\_\_ TRUSTEE  
PARTY \_\_\_\_\_ COUNSEL  
DATE 6/19/00 BY [Signature] FOR MOVANT

**PLEASE SERVE COPIES OF THIS ORDER  
ON ALL OTHER PARTIES TO THIS ACTION.**

**A-211**  
**ORDER OF HONORABLE HAROLD TOMPKINS**  
**DATED SEPTEMBER 18, 1992**  
~~COUNTY OF NEW YORK     JAS     -     PART 1,~~  
-----X

SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,  
HERSKOWITZ and  
HERSKOWITZ,

Defendants.

INDEX NUMBER

24517 38

MOTION SUBMITTED:

09 15 92

-----X  
In the Matter of the Application  
of

JUDITH HERSKOWITZ, Individually,  
and As the Guardian of Alex Fried,  
HERSKOWITZ, and  
HERSKOWITZ,

Petitioners,

For A Judgment Under Article 78 of  
the Civil Practice Law and Rules  
In the Nature of Prohibition and  
In the Nature of a Mandamus

-against-

HON. HAROLD J. TOMPKINS, Justice of  
the Supreme Court of the State of  
New York, New York County,

Respondent.

(SUSAN CHARNEY, Plaintiff In the  
Court Below)

Additional Respondent.  
-----X

INDEX NUMBER

21002/92

HAROLD TOMPKINS - Justice:

Plaintiff Charney's motion to hold defendants in contempt for failure to produce the corporate books and records in accordance with this Court's order of June 1, 1992, to direct the Herskowitz defendants to appear for depositions to deem the matters in the notice admitted and for other relief, the Herskowitz defendants' motion for a protective order, plaintiff Charney's cross motion for deposition priority and Charney's motion in the article proceeding for a turnover pursuant to the judgment are all consolidated for disposition and decided as noted below.

The Court notes that once again the Herskowitz defendants' principal arguments contend that the Court lacks jurisdiction. This issue has been resolved by this Court and affirmed by the Appellate Division, New York Law Journal, June 25, 1992, p. 23, c. 4.

Defendant █████ Herskowitz is an attorney admitted to practice law in Florida and defendant Judith Herskowitz had stated on the record on August 18, 1992 that she had graduated from law school. Acceptance of court orders should be familiar to them. The Court again reiterates that it will not consider the ex parte telephone requests for adjournments made by defendant Judith Herskowitz.

The pattern of delay and obstruction by the Herskowitz defendants is noted in this Court's opinion in imposing sanctions, 150 Misc. 2d. 849. The Appellate Division separately

imposed sanctions in the Herskowitz' special proceeding, New York Law Journal, June 25, 1992, p. 25, c. 1. It took note of their consistent duplicative and vexacious motions interposed to delay and harass their adversary. Charney's turnover motion arises out of the judgment entered pursuant to the Appellate Division's order imposing sanctions, costs and disbursements. In the oral argument on the record on August 18, 1992, Judith Herskowitz acknowledged that she had not paid this judgment.

The motion to direct a turnover to the sheriff pursuant to CPLR 5525(a) is granted and the Herskowitz defendants are directed to turnover their shares in North Jersey Trading Corporation within 20 days after service of a copy of this order with notice of entry.

Plaintiff Charney's motion for contempt and cross motion for priority are granted to strike the Herskowitz defendants' 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.

At oral argument on the record on September 15, 1992, the Court advised the Herskowitz defendants' "messenger" that depositions would commence on October 29, 1992 and continue under a referee's supervision until completed. This Court will not excuse any failure to appear by the Herskowitz defendants on that date. The record in this case is replete with contentions of illness, wholly unsupported, and unreadiness for a variety of dubious reasons. The Herskowitz defendants are now

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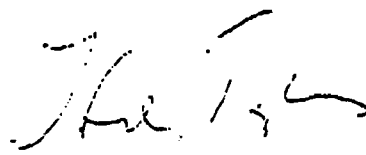
on notice that pursuant to CPLR 3126 and Judiciary Law 753 that their pleadings will be stricken if they do not comply with this order of the Court, see *Mills v Ducille*, 170 AD2d 657 (2d. Dept. 1991); *Reitte v Entarmy Cab Corp.*, 162 AD2d 259 (1st. Dept. 1990).

The depositions shall continue from day to day until complete with the Herskowitz defendants testifying first and plaintiff Charney thereafter. Pursuant to CPLR 3104, the depositions shall be supervised by a referee. Any failure to answer, or obstructive behavior, shall be referred to this Court for striking of pleadings, contempt, or other appropriate determination. The Herskowitz defendants shall produce the corporate books and records not less than ten days prior to October 29, 1992. The argument concerning timely service of the order to show cause for contempt is patently frivolous since the order to show cause for contempt was clearly served in accordance with Justice McCooe's order.

The motion for protective order is resolved by deeming the notice to admit denied. The Herskowitz defendants have stated that they contest the items in this notice. Pursuant to CPLR 3123(c), the determination that a refusal is unreasonable and the penalty for refusal is resolved at or after trial by the Court.

This decision constitutes the order of this Court. A copy has been mailed to plaintiff's counsel and the Herskowitz defendants.

Dated: September 18, 1992

  
J.S.C.

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JUDGMENT DATED AUGUST 19, 1992

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

JUDGMENT

IN THE MATTER

OF

THE APPLICATION OF

JUDITH HERSKOWITZ, individually and as  
the guardian of ALEX FRIED,  
HERSKOWITZ, and HERSKOWITZ,

Petitioners,

For a Judgment under Article 78 of the  
Civil Practice Law and Rules in the  
Nature of Prohibition and in the  
Nature of a Mandamus

-against-

HON. HAROLD J. TOMPKINS, JUSTICE OF  
THE SUPREME COURT OF THE STATE OF NEW  
YORK, NEW YORK COUNTY,

Respondent.

SUSAN CHARNEY, Plaintiff in the  
Court Below,

Additional Respondent.

-----X

Petitioners having brought on the within proceeding before a panel of the Appellate Division, First Department; and petitioners having appeared, pro se; and Respondent, Hon. Harold Tompkins, having appeared by Hon. Robert Abrams, Attorney General of the State of New York, by Lisa Evans, Esq., and having moved to dismiss the proceeding, and for other relief; and Additional Respondent, Susan Charney, having appeared by Steven Delibert, Esq., and having moved to dismiss the proceeding, and for other relief; and the said motions having duly come on to be heard in the said Appellate Division, First Department; and the said Ap-

Index No.

23002/92

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pellate Division, First Department, by Decision and Order dated and entered June 23, 1992, as corrected July 10, 1992, having granted the said motions to dismiss the proceeding, and for other relief; and the said Appellate Division, First Department by said Decision and Order having further awarded the costs and disbursements of the said proceeding, in the amount of \$250.00, in favor of Additional Respondent and against Petitioners; and having further awarded motion costs, in the sum of \$400.00, in favor of the Additional Respondent and against Petitioners; and having awarded the sum of \$5,000.00 in sanctions against the Petitioners, payable directly to the Additional Respondent's attorney; and the said Appellate Division, First Department having directed the entry of judgment for said sums against Respondents;

NOW, on motion of Steven Delibert, Esq., attorney for the said Additional Respondent, it is

ORDERED AND ADJUDGED that the said Additional Respondent Susan Charney recover of the Petitioners the said sum of \$5,000.-

00 in sanctions; together with \$650.00 costs and disbursements, *X MAKING A TOTAL OF \$1,650 AND THAT ADDITIONAL RESPONDENT HAVE EXECUTION*  
Judgment signed this 10 day of August, 1992. *THEARFOR*

*T.C.H./8/18*

*Norman ...*  
Clerk

Petitioners - Judgment Debtors:

Judith Herskowitz  
3470 Chase Avenue  
Miami Beach, Fla.  
33140

~~██████████~~  
490 West End Ave.  
New York, N. Y.  
10024

~~██████████~~  
4205 Meridian  
Avenue N  
Miami Beach, Fla.  
33140

\\LITIG5\CHMONDCST.JDG

*ADDITIONAL RESPONDENT:  
585 WEST END AVE  
NY - NY - 10024*

**FILED**  
AUG 19 1992  
COUNTY CLERK'S OFFICE  
NEW YORK

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SATISFACTION OF JUDGMENT

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

DATED MAY 1999

X

IN THE MATTER  
OF  
THE APPLICATION OF

JUDITH HERSKOWITZ, individually and as  
the guardian of ALEX FRIED,  
HERSKOWITZ, and HERSKOWITZ,

Petitioners,

For a Judgment under Article 78 of the  
Civil Practice Law and Rules in the  
Nature of Prohibition and in the  
Nature of a Mandamus

SATISFACTION OF  
JUDGMENT  
AS TO  
HERSKOWITZ  
AND  
HERSKOWITZ

Index No. 23002/92

-against-

HON. HAROLD J. TOMPKINS, JUSTICE OF  
THE SUPREME COURT OF THE STATE OF NEW  
YORK, NEW YORK COUNTY,

Respondent.

SUSAN CHARNEY, Plaintiff in the  
Court Below,  
Additional Respondent.

X

WHEREAS a judgment was on the 19th day of January, 1993,  
recovered by the Additional Respondent, Susan Charney, against  
the Petitioners Judith Herskowitz, Robert and Mark  
, in the above entitled proceeding for the sum of Seven  
Thousand (\$7,000.00) Dollars, which judgment was on the 19th day  
of January, 1993, duly docketed and entered in the judgment book  
in the office of the Clerk of the County of New York at Book \_\_\_\_,  
Page \_\_\_\_, and whereas said judgment has been wholly paid AS TO  
ROBERT AND MARK

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THEREFORE, satisfaction of said judgment SOLELY BY ~~ROBERT~~  
HERSKOWITZ AND ~~MARK~~ HERSKOWITZ is hereby acknowledged, and the  
Clerk of the County of New York is hereby authorized and directed  
to cancel, satisfy, and discharge the same, SOLELY AS TO ROBERT  
AND MARK.

Dated: New York, N. Y.  
May , 1999

In Presence of:  
Sign: [Signature]  
Print Name: STEVEN DELIBERT  
Sign: Myrna Carbonell  
Print Name: MYRNA CARBONELL

Sign: [Signature]  
Print Name: SUSAN CHARNEY  
SUSAN CHARNEY (INDIVIDUALLY; TO THE  
EXTENT IF ANY SHE MAY BE A SHARE-  
HOLDER OF NORTH JERSEY TRADING  
CORP.; AND DERIVATIVELY ON BEHALF OF  
NORTH JERSEY TRADING CORP.)  
585 West End Avenue  
New York, N. Y. 10024

In Presence of:  
Sign: [Signature]  
Print Name: SUSAN CHARNEY  
Sign: Myrna Carbonell  
Print Name: MYRNA CARBONELL

Sign: [Signature]  
Print Name: STEVEN DELIBERT  
STEVEN DELIBERT  
277 Broadway  
New York, N. Y. 10007  
(212)267-7183  
AS ATTORNEY FOR SUSAN CHARNEY AND  
INDIVIDUALLY TO THE EXTENT THAT ANY  
JUDGMENT HEREIN MAY RUN IN HIS FAVOR

In Presence of:  
Sign: [Signature]  
Print Name: STEVEN DELIBERT  
Sign: Myrna Carbonell  
Print Name: MYRNA CARBONELL

Sign: [Signature]  
Print Name: Paul Windels III  
PAUL WINDELS, III  
150 Broadway  
New York, N. Y. 10038  
(212)374-9260  
RECEIVER FOR NORTH JERSEY TRADING  
CORP

In Presence of:  
Sign: [Signature]  
Print Name: Robert Hershkowitz  
Sign: Marianne Ortiz  
Print Name: Marianne Ortiz

Sign: [Signature]  
Print Name: Karen E. Beznar  
KAREN E. BEZNER  
567 Park Avenue  
Scotch Plains, N. J. 07076  
(908)322-8484  
TRUSTEE IN BANKRUPTCY FOR NORTH  
JERSEY TRADING CORP.

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ACKNOWLEDGEMENTS

State of New York, County of New York, ss.:

On May 7, 1999 personally appeared STEVEN DELIBERT, to me known, and known to me to be the person named in and who executed the foregoing document, and he acknowledged to me that he is the attorney for Susan Charney, Judgment Creditor, and that he affixed his signature to the foregoing document by authority of said Judgment Creditor.

Dated: May 7, 1999

Notary Public signature and stamp: STEVEN A. DELIBERT, Notary Public, State of New York, No. 24-4515869, Commission Expires March 30, 1997.

State of New York, County of New York, ss.:

On May 7, 1999 personally appeared PAUL WINDELS, III, to me known, and known to me to be the person named in and who executed the foregoing document, and he acknowledged to me that he is the Receiver for North Jersey Trading Corporation, derivative Judgment Creditor, and that he affixed his signature to the foregoing document in said capacity as receiver of said Judgment Creditor.

Dated: May 7, 1999

Notary Public signature and stamp: STEVEN A. DELIBERT, Notary Public, State of New York, No. 24-4515869, Commission Expires March 30, 1997.

State of NJ, County of Union, ss.:

On May 27, 1999 personally appeared KAREN E. BEZNER, to me known, and known to me to be the person named in and who executed the foregoing document, and she acknowledged to me that she is the Bankruptcy Trustee for North Jersey Trading Corporation, derivative Judgment Creditor, and that she affixed her signature to the foregoing document in said capacity as trustee of said Judgment Creditor.

Dated: May 27, 1999

MARIANNE ORTIZO, NOTARY PUBLIC OF NEW JERSEY, Commission Expires 6/22/2003

Notary Public signature and stamp: MARIANNE ORTIZO, Notary Public, State of New Jersey, Commission Expires 6/22/2003.

State of New York, County of New York, ss.:

On May 7, 1999 personally appeared SUSAN CHARNEY, to me known, and known to me to be the person named in and who executed the foregoing document, and she acknowledged to me that she executed the same.

Dated: May 7, 1999


Notary Public signature and stamp: STEVEN A. DELIBERT, Notary Public, State of New York, No. 24-4515869, Commission Expires March 30, 1997.

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State of New York, County of New York, ss.:

On ~~May~~<sup>June 3</sup>, 1999 personally appeared SUSAN CHARNEY, to me known, and known to me to be the person named in and who executed the foregoing document, and she acknowledged to me that she executed the same.

Dated: ~~May~~<sup>June 3</sup>, 1999

  
Notary Public  
STEVEN A. DELIBERI  
NOTARY PUBLIC, State of New York  
No. 24-4515869  
Qualified in Kings County  
Commission Expires March 22, 2000

1/31/2000

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**AFFIDAVIT OF DEFENDANT JUDITH HERSKOWITZ  
SWORN TO ON SEPTEMBER 1, 2004**

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

IAS Part 30 Heitler J.

SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,  
HERSKOWITZ and HERSKOWITZ,

Defendants.

**AFFIDAVIT IN SUPPORT OF  
MOTION TO VACATE THE  
JANUARY 19, 1993 CONTEMPT  
ORDER, THE FEBRUARY 19,  
1993 ORDER OF COMMITMENT  
THE JANUARY 19, 1993 ORDER  
ENTERING DEFAULT AND  
THE JANUARY 21, 1994 DERI-  
VATIVE DEFAULT JUDGMENT**

Index No. 24517/88

STATE OF FLORIDA     )  
                                  ) S.:  
MIAMI-DADE COUNTY    )

JUDITH HERSKOWITZ, being duly sworn, deposes and says:

1. I make this affidavit on personal knowledge, without submitting to the personal jurisdiction of this Court, pursuant to CPLR §2221 and §5015(a) in support of this motion to vacate the January 19, 1993 contempt order entered by default for alleged discovery violation, not provided under the rules and awarding fees of \$23,500.00 to Steven Delibert (Exhibit 12); the related February 19, 1993 Order of Commitment (Exhibit 15); the January 19, 1993 order entering default judgment without the required proof (Exhibit 11); and the January 21, 1994 judgment entered by default for the sum of \$4,300.024.42 in favor of Plaintiff on behalf of North Jersey (Exhibit 19), a companion to the November 22, 1993 default judgment entered against Robert and Mark Herskowitz (Exhibit 18) which judgments were entered without the required proof of service of the summons and complaint. Concurrently there is also filed under Index No. 23002/92 a Motion to Vacate a jurisdictionally void turnover order dated September 18, 1992, and entered on September 21, 1992 upon which yet another January 19, 1992 contempt order and

proceeding by the trustee for \$3 million dollars by open bid in the courtroom. Plaintiff never questioned the bid price as being less than the fair market value for the North Jersey property.

**The \$4.2 Million Dollar Default Judgment Was Entered on Referee's Findings at the March 1, 1993 Inquest, Based on Plaintiff's ex Parte Submissions Comprised of Fraudulent Presumptions, Damages Based on Fictionalized Losses of Rental Income, False Claims of Misuse of Mortgage Proceeds, and Diminution of Value, All of Which Were Outside of the Amended Complaint**

**A. Fraudulent Presumptions**

38. Plaintiff concedes on pg. 4 of her Memorandum that the North Jersey property was managed by Hedy and Alex Fried. She claims that ~~Robert~~ Herskowitz entered into a management agreement with Fried on December 25, 1984. To lay a false predicate to deprive me of my interest in the North Jersey real property, Plaintiff attributes the purported damages to the management of Robert Herskowitz, for which she attempts to make me liable by some contrived fiduciary duty. In fact Delibert acknowledged in this his December 1, 1988 letter that I had no access to the corporate books and records (Exhibit 1). Also disregarded by Plaintiff is the fact that Alex Fried lived in New York for years after 1984, actively managed the North Jersey property and participated in that management, even after he moved to Florida, where he died in 1992. That Fried was in control was acknowledged by Plaintiff in her letter dated January 14, 1991 stating that

**"In early 1987, my father, your grandfather, Alexander Fried, as president and chief executive officer of North Jersey Trading Corporation, gave me the use of Apartment 1C in the captioned premises, for as long as I should choose to use it." (Emphasis supplied). (Exhibit 22)**

39. Plaintiff lays the credibility of her presumption of what the rental income should have been and could have been, on a purported one month rent roll which she claims to have "produced from her own records" showing that the "rents collected from the property in 1982,

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shortly before Robert [redacted] assumed management totaled \$24,000.00 per month" (pgs. 5 and 15 of the Memorandum). However, as Plaintiff was fully aware, an alleged one month's rent roll was no indication of how much rent was collected for the year of 1982. This is evidenced by the federal corporate tax return filed for the fiscal year of 1982 by North Jersey of which Plaintiff had a copy, showing gross rents for the year in the sum of \$246,243.00, so that the average monthly rents collected was \$20,520.25 (Exhibit 23) and not \$24,000.00 as Plaintiff claimed.

40. As noted below, in ¶ 45 of this Affidavit, many of those rents were rolled back at a later date, by the New York State Division of Housing and Community Renewal (DHCR) for having been overstated, which fact is fraudulently omitted by Plaintiff. So, that the average monthly rent roll for 1982 was well below \$20,000.00. Moreover, that 1982 tax return shows operating expenses for the year of \$245,653.00, an average monthly expense of \$20,471.08. Even if the depreciation expense of \$14,442.00 is eliminated there were still \$231,211.08 in expenses for the year of 1982, an average monthly expense of \$19,267.83, as opposed to Plaintiff's fixed expense of \$15,000.00 a month for the period from 1985 to 1993.

41. The 1982 tax return also shows that the only officer and shareholder to receive compensation was Alex Fried for \$17,400.00 for the year, and no compensation is shown for Plaintiff. The return also shows a negative retained earning or losses of - \$20,194.00 and a loan from the stockholder Alex Fried for \$5,410.00, consistent with the fact that North Jersey often operated at a loss, which was also known to Plaintiff.

**B. Illegally Inflated Rent Rolls and Fictionalized Rental Income**

42. To create an appearance of diverted rental income, Plaintiff invented a hypothetical

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fraudulent rental income ranging from \$28,000.00 to \$40,000.00 a month, for the period from January 1, 1985 to February 1993, for a total of 98 months, in the sum of \$3,486,840.59, which Plaintiff claimed should have been collected by . . . This statement of hypothetical rental income is contained in Plaintiff's Summary of Rents and Expenses attached to her Post Inquest Memorandum as Table "A" (Exhibit 24). In preparing this summary Plaintiff relied on inaccurate and inflated rents many of which had been rolled back because of overstated rents in leases made by Alex Fried prior to 1984 as noted below in ¶45. Moreover, Plaintiff included not only the vacant apartments, but at an illegal and unlawful "market rent". From this illusory rental income, Plaintiff subtracted grossly underestimated expenses of \$15,000.00 a month for 98 months in the sum \$1,470,000.00. Plaintiff claimed the difference as the "diverted income" in the total sum of \$2,016,840.59 (page 14 of the Memorandum).<sup>5</sup>

43. Plaintiff's summary of rents attached to her Memorandum as "Table A" was based only on a one month hypothetical rent for each year, from 1984 to 1993 (Exhibit 24). In these invented annual rent rolls, Plaintiff included rents for each and every one of the 54 apartments plus a purported basement apartment, for the period from January 1985 to February 1993, to create her final hypothetical sum of \$3,486,840.5. Plaintiff listed these hypothetical rents as though they were paid 100 percent on each and everyone of the apartments for each of the twelve month of the year during this 98 month period, which she knew was not the case (Exhibit 28, pg. 100). Excepted were apartments 5C in 1983 and F1 in 1988, 1989 and 1990 occupied by Plaintiff

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<sup>5</sup> The loss of income of \$2,016,840.59 is shown to be \$2, 104, 963.33 in the Referee's March 22, 1993 Report (Exhibit 17) and also in Plaintiff's November 22, 1993 judgment and in the January 21, 1994 judgment purportedly on behalf of North of Jersey, for an overstatement of \$88,122.80 just in mathematical miscalculation.

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and/or her son Michel Plaintiff for which no rent was paid, a loss of \$35,000.00 to North Jersey.

44. Plaintiff claims she obtained the rents from registrations for the property filed with the DHCR from 1984 to 1989 (page 6 of the Memorandum). Plaintiff disregards the disclaimer noted on the copies of those registrations stating that

“DHCR does not attest to the truthfulness of the owner’s statements or the legality of the rents reported in this document. Furthermore, this document does not necessarily reflect modifications to the lawful rent or other registration information as a result of orders issued by DHCR.”

45. While Plaintiff purports to base her monthly rents on reports she obtained from the DHCR, the rent roll backs which were also determined by DHCR and is a part of their record, were fraudulently omitted by Plaintiff. These records show not only a rollback of rents, but also compensation to the tenants for the overcharges, with interest and sometimes with treble damages (Exhibit 25). Some of these DHCR records that I located are noted below as follows:

Lawrance Mc.Cready - Apartment 3 A - filed complaint on 11-2-84 claimed rent overcharge from Fried. Settled with Fried on 3-19-87.

Camilla D. Carpenter - Apartment 4A - Carpenter claimed that she took occupancy pursuant to a sublease commencing from March 1, 1982 for one year at a monthly rental of \$623.51. In 1983 she executed a three year lease till 1986 with Fried. Carpenter said main tenant Mc.Cready wanted apartment in case of co-op conversion. As of March 1, 1983 to 1986 the lawful basic stabilized monthly rental was determined to be \$391.49. Carpenter was also awarded \$13,794.72 as compensation for the overcharge. Issued January 15, 1986.

Daniel Marcus - Apartment 6C - DHCR rolled back monthly rent to \$529.82 and received compensation for overcharges from 1985 in the sum of \$771.24. Issued October 2, 1986.

Jeffrey B. Gould - Apartment 2D - DHCR determined that owner collected overcharges from June 15, 1982. The overcharges were deemed willful and subject to treble damages after April 1, 1984. The rent pursuant to a 1982 lease for the monthly rent of \$504.42 was reduced to a basic monthly stabilized rental of \$355.90 and \$416.94 from 1986 with an award of \$29,724.63 as compensation for overcharges. Issued June 26, 1989.

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Robert Taffet & Louis Kleinman - Apartment 9E - claimed overcharge based on a 1977 lease for the monthly rental of \$423.57. DHCR reduced it to basic stabilized monthly rental of \$374.84 with an award of \$12,835.08 as compensation for overcharges. Issued February 11, 1987.

Daniela Faibes - Apartment 6F - claimed overcharge from a 1979 lease. The apartment went from rent control to rent stabilization, upon the rent control tenant having vacated the apartment. The rent control tenant was paying \$250.00 and a \$500.00 market rent was charged. Tenant filed complaint on 8-20-84. Rent was reduced to a \$338.8 monthly base rent, with an award of \$16,349.19 as compensation for overcharges. Issued September 18, 1989.

Jeffrey Stone - Apartment 7F - Filed complaint March 31, 1984 claimed overcharge from 1978 lease and sought rollback on the \$581.92 rent he paid in 1984. DHCR reduced his monthly rent stabilized rent to \$458.04 from 1983 to 1986 with an award of \$10,956.40 as compensation for overcharges. Issued September 4, 1986.

46. As shown above it is not only that the rents were rolled back, but compensation was awarded to the above noted tenants in the aggregate sum of \$85,000.00. Since North Jersey owed the tenants the money, they paid no rent for years. The above was pursuant to a 1984 Rent Stabilization law requiring owners of a housing accommodation to register the apartments with DHCR. As noted above the applications for rent decreases were made by the tenants based on rents in leases executed prior to 1984, which by Plaintiff's own account were before any assumption of "management" by Robert J [redacted] in "1985". These leases were made with the tenants by Alex Fried, many going back to the 1970's, and he was named as the owner in the tenants' complaint. So, that Alex Fried was an indispensable party to the derivative damages, yet he was not named as a party to Plaintiff's purported derivative suit.

47. Plaintiff states that she made her own "adjustments and assumptions" to the rents she relied on in the DHCR Report (pg. 16 of the Memorandum ). She states that on apartments that "disappeared from the registrations", she used a "higher sum for the omitted period". This was

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in reference to what she knew were about 12 rent controlled apartments on which the rents remained the same as in the 1984 registration. Plaintiff noted these as <1>. Although those rents could not be increased, Plaintiff added a total of about \$232.00 a month to those rents which comes to about \$22,500.00 for the 98 month period.

48. Plaintiff makes another patently false "adjustment", asserting "that where reported rents are reduced without explanation from one period to the next each of the defendants are charged with the higher rent" which she designates as <2> and <3>. As noted above, the explanation is that the rents were rolled back by the DHCR. In a deliberate misrepresentation in order to inflate her rent summary, Plaintiff disregards the reduced rents in her "summary of rents" and states the overstated amounts, which includes the period that the tenants were not paying rent because, they were living off the compensation awarded to them by the DHCR.

49. To further create an appearance of "diverted income" Plaintiff assumes a "market rent" for vacant apartments which she notes as <4> and <5>. Plaintiff relies on an alleged October 1990 rent roll that "appeared to be the handwriting of Robert Herskowitz", and on the reports of rentals received from June, 1991 through February, 1993 by the manager retained for the property by the receiver appointed on behalf of the mortgagee Nathanson (pgs. 21, 22 of the Memorandum). This is yet another of the fraudulent and illegal means resorted to by Plaintiff to inflate the damages, to hold the Herskowitzes liable for the rolled back rents, for the nonpayment of rents and vacancies, including while the building was under the receiver from 1991 to 1993. .

50. Under the DHCR regulation these rent stabilized apartments could not be turned into "market rents" simply because of their vacancy. "Market rents" required capital improvements that could be amortized over a 40 months period, i.e., for each \$10,000.00 invested the rents

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could be raised \$250.00 a month. Thus, to bring up to "market rent" of over \$1,000.00 to \$1,800.00 on anywhere from 6 to the 18 vacant apartments under the receiver, would have required an investment of many hundreds of thousands of dollars, which Plaintiff's litigation prevented. Yet, close to \$20,000.00 of the hypothetical \$40,000.00 monthly rent roll claimed by Plaintiff, consisted of these non-existent "market rents" on vacant apartments.

51. Plaintiff claim that pursuant to her so-called expert's contentions "there was no conceivable business reason for keeping these apartments vacant; ...all could have been rented at their market values" (pg. 22 of the Memorandum) Plaintiff knew this to be false. She acknowledged in a May 13, 1996 deposition that the only way to increase income was a co-op conversion or capitol improvement on the vacant apartments (Exhibit 28, pg. 108). Plaintiff supported bankruptcy Trustee, Ms. Bezner's position to keep the vacant apartments unoccupied, which policy was stated by Trustee at an August 3, 1994 hearing (Excerpt - Exhibit 26) as follows:

"Ms. Bezner: That if you don't do renovation work on an apartment, you are limited to the last rent collected on that apartment as far as what you can charge, because of the rent stabilization law. If the last time that apartment was rented, and most of the empty ones were last rented way prior to 1991, 1985 or '86 is the average date. If you have to go back to rents during this period, I'm losing a lot of money that going forward this debtor could collect. Or a buyer could collect, and I am ruining the marketability of the building, and the ability of that building to collect rent for the sake of a very tiny short term benefit. I don't want to do that.

The Court: Run that – run that by me again.

Ms. Bezner: Your Honor, I am limited to the rents collected by these apartments for the last prior tenant, unless I do substantial renovations and then I can charge it increased based, on a percentage of those renovations.

The Court: Does the – does the estate have money do renovations?

Ms. Bezner: No, sir. No, Your Honor.

**C. Falsely Understated Expenses**

52. While Plaintiff attempted to appear meticulous in itemizing each of the alleged rents for each of the 54 apartments and the basement unit on a monthly basis, as to the expenses she relied on an unsupported statement "that Robert [redacted] made in an affidavit filed on August 30, 1990 in the foreclosure action, Nathanson v. North Jersey Trading Corp., Supreme Court, New York County Index No. 12773/90 "wherein he said that the 'expenses to operate the premises...are approximately \$9,000.00 a month which also excludes taxes, water, sewer and mortgage charges.' Plaintiff allowed \$6,000.00 for these additional expenses for a total monthly expenses of \$15,000.00 (pg. 23 and 24 of the Memorandum), although she has never shown what this \$9,000.00 estimate covered and obviously, management fees, office expenses, insurance, professional fees, and assorted expenses and provision for Fried were also not included.

53. Plaintiff allotted this same arbitrary \$15,000.00 monthly expenses, for over eight years disregarding inflation, the doubling of taxes etc. Plaintiff misrepresented that this non-probative Herskowitz Affidavit was the only available source of expenses to her, despite relying on the rental income for 1991 and 1992 on the reports of the manager retained by the court appointed receiver for the mortgagee Nathanson, which reports also contained itemized corporate expenses, and statements that many tenants were not paying rent. As shown in the North Jersey tax return filed for 1991 (Exhibit 27) the operating expenses were \$360,905.00 for the year, or \$30,075.42 a month of which the taxes, water and mortgage interest alone were \$145,211.00 for an average of \$12,100.92 a month of which Plaintiff allowed less than half or \$6,000.00 a month.

54. On top of her false damages, Plaintiff claimed prejudgment interest at the rate from 9 to 20 percent purporting to justify a substantial amount of pre-judgment interest of close to one

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million dollars, because the Herskowitzes "diverted for their own use two million dollars" and should not have free use of it, which as shown here is a brazen false unproven accusation. (pg. 28 of the Memorandum). This is Plaintiff's biggest falsehood of all, since she recognized that the income generated by North Jersey belonged to Alex Fried who died in March 1992,<sup>6</sup> so that Plaintiff never had a claim for corporate income and was never entitled to it. (See, excerpts of May 1996 deposition, Exhibit 28). Moreover, the damages of that diverted income cover the period from January 1985 to March 1993 which is during the period that Fried was alive and was entitled to that income, yet his interests were unrepresented at the March 1, 1993 inquest.

### D. Fraudulent Claim of Missing Mortgage Proceeds

55. Plaintiff's claim of "damages in the amount of \$200,000.00 due to two mortgages

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<sup>6</sup> In a May 13, 1996 deposition taken in the Florida case, Plaintiff conceded that Fried did get the income and profits of North Jersey, and that she received no dividends or distributions, testifying on pages 99, 157, 212 and 213 of the May 13, 1996 transcript as follows:

"Q. Did you father draw any money from the corporation?

A. I think he did. Yeah.

Q. Did he do this by way of salary or just taking profits?

A. He got the profits somehow. I'm not sure how."

"Q. Do you know who paid the monthly condo expenses, and the nurses and so forth for your dad here in Florida

A. No I do not.

Q. While he was alive

A. I do not."

"Q. Did your dad ever engage in any other type of employment than operating North Jersey Trading Corporation during the time that the corporation has been in existence?

A. No.

Q. So that it was his sole source of income?

A. Right"

Q. Did you ever receive any dividends from North Jersey?

A. No."

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improperly placed on the property" by Robert [redacted] is also false (pgs. 14 & 25 of the Memorandum). Due to Plaintiff's litigation the corporation was forced to turn to private lenders to borrow \$150,000.00 from Joseph Nathanson and \$50,000 from Bina Kamilar to pay off a balloon mortgage held by Apple Bank For Savings upon which the unpaid principle and interest became due on the 1<sup>st</sup> day of March 1989 (Exhibit 2). Thereby, Plaintiff knew that these funds could not have been and were not diverted as she falsely insinuates in her Memorandum for alleged purchases of real property by Robert and [redacted] which at any rate Plaintiff does not claim to have included Judith Herskowitz.

56. That these funds were not misused is evidenced by a copy of a bank check caused to be issued by the private lender Joseph Nathanson directly to Apple Bank for Savings in the sum of \$150,000.00. Further checks in the sum of \$14,200.00 and \$9,773.00 were also paid to Apple Bank in payment of their mortgage. Other checks were issued for the sum of \$3,000.00 and \$1,000.00 for documentary stamps; \$8,159.00 to Title Guarantee, \$4,505.00 for insurance, \$1,575.00 for legal fees on the Kamilar mortgage and the remainder was in payment of legal fees and points on the first mortgage (Copies of checks and receipts attached as composite Exhibit 29). So, contrary to Plaintiff's false claims, no real estate could have been purchased by Robert and Mark Herskowitz from the proceeds of that \$200,000.00 mortgage.

**E. Fraudulent Claim of Loss Upon Theory of Devaluation**

57. Plaintiff manufactured further damages of \$960,000.00 by claiming a loss in market value for the North Jersey property due the vacant apartments without any credible expert appraisal of the market value of that real property. However, by treating the unoccupied apartments as

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inventory to be sold, the value to North Jersey property was increased by millions of dollars, a sound management decision.<sup>7</sup> Alternatively, upon having brought up the unoccupied apartments to "market rent" with a substantial capital investment, the rent roll could have been raised to \$40,000.00 a month or more.

58. In fact those vacant apartments were all the more valuable because pursuant to a 1993 revision in the Rent Stabilization law, vacant apartments renting for \$2,000.00 or more became decontrolled, which would have greatly increased the value of the North Jersey property. As noted in ¶ 51 above, the bankruptcy trustee took the same position agreeing that keeping the apartments vacant was in legitimate furtherance of corporate purposes, with which Plaintiff agreed. So, that this diminution in value was another bad faith invention by Plaintiff.

**No Derivative Damages Had Been Shown by Plaintiff and Delibert**

59. That the rental income and expenses stated by Plaintiff were the work of pure fiction and a fraud perpetuated on the Court, and upon Herskowitzes is further evidenced by the tax returns filed by Trustee in the Bankruptcy Court for the New York receiver for the years of 1991 and 1992. While Plaintiff claims as a "collectible rental income" of \$40,000.00 per month or \$480,000.00 for each of those years, the 1991 return shows a rental income of \$149,716.00, and a rental income of \$215,087.00 for 1992, with a net operating loss for each of those years.

(Exhibits 27 and 30). At any rate there was no claim let alone proof that Judith Herskowitz participated in any act of mismanagement prior to the filing of this case, or afterwards. Based

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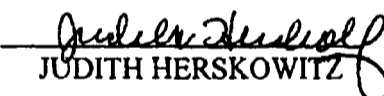
<sup>7</sup> On the average the fair market value of these unoccupied units at the time of the lawsuit was \$200,000.00 and more especially with river view, which would have realized millions of dollars for North Jersey. By contrast the occupied units could only be sold at an insider price below market value.

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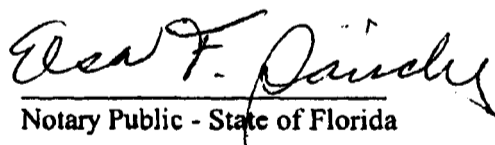
upon the actual rents and expenses, the use of the mortgage funds to pay off the corporate mortgage and its attendant expenses, it is patent, there were no derivative damages and certainly none caused by Judith Herskowitz.

60. No previous application has been made for the relief sought herein. Judith Herskowitz does have pending a prior motion dated November 1, 2003 seeking to vacate the January 21, 1994 derivative judgment under Index No. 24517/88 on the ground that it was entered without personal jurisdiction over the Herskowitzes and Fried.

WHEREFORE, for all the foregoing reasons I respectfully request that the within motion to vacate the orders and judgments noted herein should be granted, and that the moving party have such other relief as the Court may deem just and proper.

  
JUDITH HERSKOWITZ

SWORN to before me  
this 1st day of September, 2004

  
Notary Public - State of Florida

ELSA F. SANCHEZ  
Notary Public, State of Florida  
My comm. exp. Nov. 21, 2004  
Comm. No. CC 978760

**AFFIRMATION OF PAUL WINDELS IN OPPOSITION TO MOTION TO VACATE  
DATED OCTOBER 1, 2004**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- x	Index No. 24517/88
SUSAN CHARNEY,	:
	:
Plaintiff,	:
	:
- against -	:
	:
NORTH JERSEY TRADING CORPORATION,	:
ALEXANDER FRIED, JUDITH HERSKOWITZ,	:
HERSKOWITZ, and HERSKOWITZ,	:
	:
Defendants.	:
	:
----- x	

IAS PART 30  
HEITLER, J.  
  
AFFIRMATION IN  
OPPOSITION TO  
MOTION TO VACATE  
ORDERS AND  
JUDGMENTS

PAUL WINDELS III, an attorney duly admitted to practice before this Court, affirms,  
pursuant to CPLR Rule 2106:

1. I am a member of the Bar of this Court and of the firm of Perry & Windels and am receiver of the assets of North Jersey Trading Corporation ("North Jersey"), pursuant to this Court's order of May 21, 1991. I submit this Affirmation in opposition to the motion of Judith Herskowitz for to vacate certain orders and judgments entered in this case and in *Matter of Herskowitz v. Hon. Harold J. Tompkins*, Index No. 23002/92.
2. I have been informed that Steven Delibert, counsel for plaintiff Susan Charney, passed away in July 2004.
3. Having represented Ms. Charney in this case since its inception, Mr. Delibert had a unique knowledge of the pertinent facts and procedural history. That knowledge is evidenced in his Affirmation dated May 28, 2003, in support of the proposed distribution of funds in this matter, as just one example.
4. As receiver, my participation in this action has been far more limited than that of

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Mr. Delibert. In addition I have not been directly involved in many aspects of the litigation I understand to have been conducted outside this Court, such as in Florida. I have had limited dealings with the bankruptcy proceeding *In re North Jersey Trading Corp.* No. 93-31620(SAS) (Bkrcty., D.N.J.).

5. In response to the application that plaintiff Charney and I jointly made for distribution of funds, Herskowitz served a number of cross motions in October 2003. Those cross motions were denominated as seeking: (1) "a stay and/or to abate in deference to preemptive and primary jurisdiction in other proceedings"; (2) "for relief . . . and for referral on application to the administrative judge: (A) upon a showing that judgments herein obtained by default were by fraud, misrepresentation, illegality, unconscionability, and violations of law and (B) requirements of New York law for service of process were not met . . ."; (3) "to compel production of documents"; (4) "The derivative judgment has been fully satisfied . . ."; (5) "no jurisdiction exists to award fees under BCL 626(e)."

6. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
October 21, 2004

  
PAUL WINDELS III

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EXCERPT OF ORDER TO SHOW REFERRED TO IN THE JANUARY 21, 1991  
ORDER AND JUDGMENT DATED JANUARY 6, 1994

At an IAS Part 13 of the Supreme  
Court of the State of New York,  
held in and for the County of New  
York, at the Courthouse, No. 60  
Centre Street, New York, New York,  
on the 6<sup>th</sup> day of January, 1994

MO SUP # 34

PRESENT:

HON. HAROLD TOMPKINS,

JUSTICE

-----X  
SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,  
HERSKOWITZ, and  
HERSKOWITZ,

Defendants.  
-----X

ORDER TO SHOW  
CAUSE TO CONFIRM  
REPORT OF REFEREE

Index No. 24517/88

UPON reading and filing the annexed Affirmation of  
Steven Delibert, Esq., executed January 4, 1994, and the ex-  
hibits annexed thereto; upon the Report of the Hon. Frank B.  
Lewis, Special Referee, dated March 22, 1993, and entered in  
the office of the Clerk; and upon all of the proceedings  
heretofore had herein,

LET defendants show cause at ~~the~~ IAS Part 13, Room 252, to  
be held at the Courthouse, 60 Centre Street, New York, N.Y.,  
on the 21 day of January, 1994, at 9:30 A.M., or as  
soon thereafter as counsel may be heard.

WHY AN ORDER SHOULD NOT BE GRANTED:

1. Pursuant to CPLR Rule 4403, modifying the said Ref-  
eree's report to correct clerical errors, and confirming the

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same, and directing the entry of judgment thereon, against the defendant JUDITH HERSKOWITZ; and

2. Granting such other and further relief as may to the Court appear just and proper.

SUFFICIENT REASON APPEARING THEREFOR,

IT IS ORDERED, that service of a copy of this Order and the papers upon which it was granted, shall be made by Certified Mail and by First Class Mail upon all parties, and by First Class Mail only upon Paul Windels, III, Esq., as temporary administrator for purposes of this action, heretofore appointed for said Alexander Fried; and as Receiver of the Property of North Jersey Trading Corp., and that the said service be made on or before

January 11, 1994,

and that such service shall be deemed good and sufficient service hereof.

ENTER :

S  
J.S.C.