

ORDER TO SHOW CAUSE OF PLAINTIFF SUSAN CHARNEY
FOR DIRECTING DISBURSEMENT OF ASSETS DATED MAY 29, 2003

Other
MOTION SEQUENCE # 39

At IAS Part 34 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 *MM 29*, 2003

PRESENT: **SHERBY KLEIN HEITLER**
HON.

JUSTICE

SUSAN CHARNEY,

ORDER TO SHOW CAUSE

Plaintiff,

-against-

Index No. 24517/88

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

Defendants.

UPON reading and filing the annexed Affirmation of Steven Delibert, Esq., executed May 28, 2003; Affirmation of Paul Windels, III, Esq., executed May 28, 2003; Affidavit of Eric Christu, Esq., sworn to August 13, 2001; Affidavit of Hywel Leonard, Esq., sworn to October 8, 2002; Affidavit of Clifford B. Hark, Esq., sworn to October 31, 2002; Affirmation of William T. Livingston, III, Esq., executed October 28, 2002; and Affidavit of Susan Charney, sworn to October 3, 2002; and the exhibits annexed to said Affirmations and Affidavits; upon the Judgments of this Court, entered, respectively, on November 22, 1993, in favor of Susan Charney on behalf of North Jersey Trading Corp., against F Herskowitz and : Herskowitz, in the amount of \$4,251,947.87; and on January 21, 1994, in favor of Susan Charney on behalf of North Jersey

Trading Corp., against Judith Herskowitz, in the amount of \$4,300,024.42; upon the Orders of this Court, entered May 21, 1991, appointing Paul Windels, III, Esq., as temporary receiver of the assets of defendant North Jersey Trading Corp., and November 24, 1995, confirming and extending the powers of such Receiver; and upon all of the proceedings heretofore had herein,

LET the defendants show cause at an IAS Part 30 of this Court, to be held at the Court-house, Room 438 60 Centre Street, New York, N.Y., on the 23 day of June, 2003, at 9:30 A.M., or as soon thereafter as counsel may be heard.

WHY AN ORDER SHOULD NOT BE GRANTED:

1. Pursuant to New York Business Corporation Law §626(e), directing the manner of distribution of sums presently held by the said Receiver of the assets of North Jersey Trading Corporation, and of any further sums which may accrue pending the ~~hearing and~~ determination of the within motion;

2. Granting to Plaintiff and Petitioner Susan Charney, individually and on behalf of North Jersey Trading Corporation, the costs and disbursements hereof;

3. Discharging and releasing the Receiver herein upon the distribution of funds in his possession in accordance with this Court's Order; and

3. Awarding the moving parties such other and further relief as may to the Court appear just and proper.

SUFFICIENT REASON APPEARING THEREFOR, IT IS

FURTHER ORDERED, that service of a copy of this Order and the papers upon which it was granted, shall be made:

1. Upon defendant Judith Herskowitz, at the address appearing upon the papers heretofore served by her as pro se defendant herein, ^{by overnight mail,} by certified mail, return receipt requested, ^{and a} with an additional copy by ordinary first class mail;

2. Upon the settling former defendants Herskowitz and Herskowitz by first class mail to each of said individuals at the addresses appearing upon the papers heretofore served by them from time to time as pro se defendants herein;

overnight mail and

3. Upon North Jersey Trading Corporation, by first class mail to Paul Windels, III, Esq., Receiver; and to Karen E. Bezner, Esq., former Trustee in Bankruptcy.

overnight mail and

and that the said service be made on or before June 3, 2003, and that such service shall be deemed good and sufficient service hereof, ~~provided that, as to mail service upon any individual defendant, the same shall be deemed complete upon mailing, notwithstanding the failure or refusal of any of said individual defendant to sign for or to accept any article of mail.~~

S

Answering papers, if any, shall be served so as to be received in hand on or before the 16 day of June, 2003, and Reply Papers, if any, shall be served so as to be received in hand on or before the 20 day of June, 2003.

ENTER
J.S.C.

Sherry Klein Heitler

SHERRY KLEIN HEITLER

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AFFIRMATION OF STEVEN DELIBERT DATED MAY 28, 2003

SUPREME COURT : STATE OF NEW YORK
 COUNTY OF NEW YORK

SUSAN CHARNEY.

IAS PART 13
 TOMPKINS, J.

Plaintiff,

ATTORNEY'S AFFIRMATION
 IN SUPPORT OF MOTION
 DIRECTING DISBURSEMENT
 OF ASSETS

-against-

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

Index No. 24517-88

Defendants.

STEVEN DELIBERT, an attorney at law duly admitted to practice before all of the
 Courts of this State, affirms under penalty of perjury:

1. I am the attorney for Susan Charney, plaintiff herein, and I have been lead counsel for Susan Charney throughout the nearly fifteen years of litigation connected with this case. I submit this affirmation on personal knowledge, in support of plaintiff's within application by Order to Show Cause, for an order directing the distribution of approximately \$682,225.89, now held by the Receiver of the Assets of North Jersey Trading Corporation, heretofore appointed by this Court.

2. As shown by the accompanying affirmations and affidavits, this application is supported or consented to by all remaining parties to this action, except for Judith Herskowitz.

3. More than fourteen years after it was instituted, the action — and all of the numerous collateral actions which it has spawned, in the state and federal courts of three states, including particularly, the bankruptcy case of North Jersey Trading Corp., discussed below — are concluded, except for continued collateral attacks on the result by defendant Judith Herskowitz, which doubtless will not conclude as long as she is living (see ¶ 22 *infra*).

4. Of the original defendants herein, t Herskowitz and rk Herskowitz have settled with Charney and the corporation, on terms described below, approved by the Bankruptcy Court and by the Receiver herein; and Alexander Fried is deceased. Only Judith Herskowitz continues to attempt to keep the matter from concluding.

5. Because of the extended nature of this litigation, and in particular, the harassing, dilatory, scorched-earth defensive tactics of defendant Judith Herskowitz, the corporation does not retain sufficient assets to pay in full the fees earned by all of the attorneys whom Charney has been required to retain over the years, in order to prosecute this matter to a conclusion.

6. The entire known assets of the corporation consist of (1) a fund of approximately \$682,225.89, which on information and belief is presently in the hands of Receiver Paul Windels, III, Esq., pending the Order of this Court as to its disbursal; and (2) this Court's judgment in the corporation's favor against Judith Herskowitz, in the amount of \$4,300,024.42, with interest since 1994, which may or may not ever be collected.

7. There are outstanding, however, unpaid charges for counsel fees and disbursements of nearly one million dollars, in addition to the amount of more than \$120,000.00 which Susan Charney has paid out of her pocket during the course of this litigation, for which she would be entitled to reimbursement if there were sufficient assets in the corporation. In addition, it is anticipated that the Receiver's fees and disbursements herein will be approximately \$20,000.00.

8. Therefore, with the exception of Judith Herskowitz, all of the interested parties — Charney; her various counsel; **and the corporation itself**, through the said Receiver heretofore appointed by this Court — have agreed to a reduced schedule of fees and reimbursements to be paid, in the amounts set forth below. The sole exception to such reduction, as agreed by all af-

affected parties, is Eric Christu, Esq., who is to be paid in full as he continues and probably will continue for some time to be harassed by Judith Herskowitz's unending, frivolous post-judgment collateral attacks in Florida, at least until it is possible to obtain an order from the Florida courts prohibiting further such activities. The agreement by Charney and by counsel to accept reduced amounts is contingent, however, on the condition that it may be reopened if the corporation should realize any recovery (by settlement or collection) on the judgments which remain outstanding against Judith Herskowitz, or if it should appear at a later date that the corporation has any assets which were not disclosed in the bankruptcy case hereinafter described.

9. This motion accordingly seeks reimbursement of attorney fees on behalf of the successful plaintiff in the following amounts:

<u>Attorneys</u>	<u>Charges Outstanding</u>	<u>Amount Agreed</u>
Susan Charney (partial reimbursement of sums already paid)	\$120,000.00	\$110,000.00
Steven Delibert, Esq.	\$767,904.74	\$401,950.94
Eric C. Christu, Esq.	\$102,879.45	\$105,000.00
William T. Livingston, III, Esq.	\$28,185.83	\$18,000.00
Clifford Hark, Esq.	\$44,541.12	\$25,000.00
Carlton, Fields, Ward, Emmanuel, Smith & Cutler	\$28,553.56	\$2,500.00
Paul Windels, III, Esq., Receiver	\$19,774.95	\$19,774.95
Totals	\$1,111,839.65	\$682,225.89

10. It is further requested that as to additional interest which shall accrue on the amount in the Receiver's hands between the date of this Court's order and the date of disbursement by the Receiver, any such additional interest be distributed to Delibert, as the lead counsel and as the

counsel taking the largest fee reduction in connection with this application.

Background: History of the Litigation.

11. To understand the amounts which are sought in fees, an understanding of the lengthy and tortured history of this litigation is required.

12. This action was an extended and bitterly litigated shareholder's derivative action, in which this Court ultimately awarded plaintiff Susan Charney complete relief, as follows:

(A) Determined and declared that Charney was a 40% shareholder in the family real estate corporation, North Jersey Trading Corp., which owned real estate at 200 Riverside Drive in Manhattan, and was controlled by the Herskowitz defendants;

(B) Appointed a receiver of North Jersey Trading Corporation's property in New York;^{1/}

(C) Ordered an accounting of the Herskowitzes' management of the property; and

(D) On the report of the referee upon such accounting, entered final judgments for over \$4,000,000.00 in favor of Susan Charney on behalf of North Jersey Trading Corp.: (i) against Robert Herskowitz and Herskowitz, on November 22, 1993, in the amount of \$4,251,947.87; and (ii) against Judith Herskowitz, on January 21, 1994, in the amount of \$4,300,024.42. (Copies of judgments annexed as Exhibit A.)^{2/} (The judgment as against Robert

^{1/}The receiver never took control of the real property, having been pre-empted by another receiver appointed almost simultaneously in a mortgage foreclosure action brought against the property by another party.

^{2/} Separate judgments entered, because of the defendants' manipulation of the bankruptcy courts. In March, 1993, during the pendency of Charney's motion herein for entry of judgment on the accounting herein, the Herskowitzes caused the corporation to file a Chapter 11 petition in the United States Bankruptcy Court for the District of New Jersey. In re North Jersey Trading Corp.,
(continued...)

Herskowitz and iv. Herskowitz — as well as all other incidental judgments and orders entered against them in connection with the enforcement of sanctions, etc., in this action and all of the related actions — have been satisfied pursuant to the settlement between Charney, the corporation, and Robert and Mark Herskowitz, described below.)

13. During the course of the action, this Court appointed Paul Windels, III, Esq., as temporary receiver of the New York property of North Jersey Trading Corp. Thereafter, this Court renewed and extended the Receiver's authority to assist in enforcement of the judgments, both (A) Because of a threat that Charney might be enjoined from proceeding herein, by a Court in Florida which initially refused to give full faith and credit to this Court's judgments (see, ¶ 20, *infra*); and (B) In order to provide a neutral fiduciary to receive any surplus which might be returned to this Court's jurisdiction upon conclusion of bankruptcy proceedings affecting North Jersey Trading Corp., which has now in fact occurred^{2/} (Copy of Order Appointing Receiver herein annexed hereto as Exhibit B; copy of Order extending Receiver's powers herein, Exhibit C hereto; copy of Opinion of Bankruptcy Court dismissing case, Exhibit D hereto; copy of Order of Bankruptcy

^{2/}(...continued)

No. 93-31620-SAS, described more fully in footnote 3, *infra*, and Paragraph 16(4), *infra*. No sooner had Charney obtained relief from the automatic stay therein, than Judith Herskowitz commenced her own personal Chapter 11 proceeding. *In re Judith Herskowitz*, No. 93-14360-BKC-AJC, Bkcty. S.D.Fla. Charney thereupon obtained an order from this Court, temporarily severing Judith Herskowitz, without prejudice, and directing entry of judgment against Mark and Robert; when Judith's bankruptcy proceeding was dismissed with prejudice, judgment entered herein against her, as well.

^{3/} In the bankruptcy proceeding described in Fn. 2, *supra*, North Jersey's real estate was sold, for nearly \$3,000,000.00; all creditors have been paid and administration completed; and the action finally dismissed, with the surplus in the Bankruptcy Trustee's hands having now been paid over to this Court's Receiver, and Judith Herskowitz's appeal from the Bankruptcy Court's final order of dismissal having itself been dismissed.

Court directing transfer of surplus to this Court's Receiver, Exhibit E hereto; copy of Order of District Court dismissing appeal from bankruptcy dismissal, Exhibit F hereto.)

14. The attorneys' services in this action alone were vastly multiplied by the defendants' style of litigation, in which frequent changes of counsel were punctuated by periods of *pro se* representation by some or all of the defendants; in which repetitive and duplicative motions were made, withdrawn, and made again, even in the face of direct orders to the contrary by the Court, particularly with respect to the defendants' claim that personal jurisdiction over them had never been obtained; in which virtually every single ruling by the Court adverse to defendants was the subject of at least one motion for rehearing, reargument, or reconsideration, and often several such motions; in which defendants repeatedly purported not to understand the Court's directions concerning argument and submission of motions, papers, and other such matters; in which defendants frequently simply refused to respect the directions and orders of the Court; and in which the defendants prosecuted multiple appeals to the Appellate Division.

15. The nature of defendants' conduct in this court is demonstrated by the numerous sanctions and contempt findings visited upon them, as this Court first sanctioned the defendants for frivolous conduct,^{4/} then held them in contempt,^{5/} and ultimately issued arrest warrants for

^{4/} Charney v. North Jersey Trading Corp., 150 Misc.2d 849, 578 N.Y.S.2d 100 (Sup. N.Y. Co. 1991) (\$5,000.00 sanction; satisfied as to R. [redacted] and [redacted] Herskowitz pursuant to settlement; unpaid to date by Judith Herskowitz).

^{5/} Charney v. North Jersey Trading Corp., Supreme Court, New York County Index No. 24517/88, Order entered Jan. 19, 1993 (\$23,500.00 contempt fine); Herskowitz v. Tompkins, on remand to Supreme Court, New York County, Index No. 23002/92, Order entered Jan. 19, 1993 (\$7,000.00 contempt fine) (both satisfied as to [redacted] and [redacted] Herskowitz pursuant to settlement; unpaid to date by Judith Herskowitz).

failure to comply with its orders.^{6/}

Related Litigation.

16. In addition to recklessly and frivolously multiplying the proceedings in this case to the greatest degree possible, the defendants also — both during the pendency of this action in New York, and after the entry of the judgments herein — initiated numerous other dilatory and retaliatory proceedings, in the state and federal courts of three states, in their efforts to avoid the entry and enforcement of the judgments herein. It was necessary for the undersigned to appear and defend such proceedings, and/or to retain associate counsel to assist in their defense, in order for this action to be brought to a successful conclusion.

17. Even a brief outline of the history of the related cases is many pages long, but such a description is necessary in order to understand the duration of this case, and the amounts of the counsel fees whose reimbursement is sought herein. The counter-litigation includes the following:

- (1) North Jersey Trading Corp. v. Steven Delibert, Esq., and Susan Charney, Supreme Court, New York County Index No. 21933/90, dismissed with prejudice for plaintiff's failure to make discovery, June 3, 1992.
- (2) Application of Judith Herskowitz, Individually and as Guardian of Alex Fried, Robert Herskowitz and _____ Herskowitz v. Honorable Harold J. [sic] Tompkins, et al., New York Supreme Court, Appellate Division, First Department Original No.

^{6/} Charney v. North Jersey Trading Corp., Supreme Court, New York County Index No. 24517/88, Order entered Feb. 19, 1993 (Order of Commitment (arrest)); Herskowitz v. Tompkins, on remand to Supreme Court, New York County, Index No. 23002/92, Order entered Feb. 19, 1993 (Order of Commitment (arrest)). (Both vacated as to Robert Herskowitz and _____ Herskowitz by subsequent order of this Court, pursuant to settlement; both unexecuted and outstanding to date as against Judith Herskowitz.)

6044/91, dismissed, with sanctions against Herskowitz petitioners, 184 A.D.2d 402, 585 N.Y.S.2d 386 (1st Dept.), appeal dismissed, 80 N.Y.2d 1023, 607 N.E.2d 818, 592 N.Y.S.2d 671 (1992).

(3) Mark Herskowitz, individually and as Personal Representative of the Estate of Alex Fried, deceased, and Judith Herskowitz v. Susan Charney, defendant's motion for change of venue to Southern District of New York granted, __ F.Supp. __ (D.C., S.D.Fla. No. 92-2531-CIV-GRAHAM, Feb. 5, 1993), appeal dismissed, __ F.2d __ (11th Cir. No. 93-4273, July 8, 1993); plaintiffs' motion for dismissal without prejudice denied, __ F.Supp. __ (D.C., S.D.N.Y. No. 93 Civ. 5248 (MGC), August 18, 1993), appeal dismissed with sanctions against plaintiffs-appellants, __ F.3d __ (2nd Cir. No. 93 CIV 9020, Dec. 7, 1993); on remand, dismissed with prejudice for plaintiffs' refusal to make discovery, __ F.Supp. __ (S.D.N.Y. March 8, 1995), appeal dismissed, __ F.3d __ (2d Cir. No. 95-7696, July 24, 1995).

(4) In re North Jersey Trading Corp., No. 93-31620 (SAS) (Bkrcty. D.N.J.), Charney's motion for relief from stay and for appointment of Trustee granted, __ B.R. __ (Oct. 14, 1993); debtor's real property ordered sold, __ B.R. __ (Aug. 31, 1994), aff'd, __ F.Supp. __, No. 94-4505 (CSF) (D.C., D.N.J. Nov. 7, 1994), appeal dismissed, 66 F.3d 312 (3d Cir. 1995); settlement approved, __ B.R. __ (Bkrcty. D.N.J. Apr. 19, 1999) (copy annexed hereto as Exhibit G), appeal dismissed, __ F.Supp. __ (D.C., D.N.J., No. CIV. 99-5208 (GEB)), affirmed, __ F.3d __ (3d Cir. No. 00-5144, Nov. 16, 2000); motion for rehearing and rehearing en banc denied, __ F.3d __ (3d Cir. No. 00-5144, Dec. 28, 2000); "motion for clarification of the order denying motion for rehearing and to stay issuance of mandate" denied,

__ F.3d __ (3d Cir. No. 00-5144, Jan. 22, 2001); bankruptcy case dismissed and surplus ordered disbursed to New York receiver, __ B.R. __ (Bkrcty. D.N.J. Aug. 9, 2000) (copy annexed hereto as Exhibit E); motion for reconsideration and clarification denied, __ B.R. __ (Bkrcty. D.N.J. Oct. 31, 2000); appeal dismissed, __ F.Supp. __ (D.C., D.N.J. No. 01-CV-1392, May 31, 2001) (copy annexed hereto as Exhibit F).

(5) In re Judith Herskowitz, dismissed with prejudice, __ B.R. __ (Bankr. S.D.Fla. No. 93-14360-BKC-AJC, Jan. 5, 1994).

(6) Judith Herskowitz v. Susan Charney, dismissed with prejudice, __ F.Supp. __ (S.D. Fla. No. 97-0868-CIV-LENARD/TURNOFF, Mar. 25, 1998), vacated in part and reversed in part, 189 F.3d 481 (11th Cir. 1999), dismissed on remand, __ F.Supp. __ (S.D. Fla. No. 98-0868-CIV-LENARD/ TURNOFF, Dec. 10, 1999).

(7) Judith Herskowitz v. Steven Delibert, Susan Charney, Karen E. Bezner, as Trustee for North Jersey Trading Corp., Hon. Alan R. Schwartz, Hon. Melvia B. Green, and Hon. Mario B. Goderich, as Judges of the District Court of Appeal of Florida 3rd District, dismissed sua sponte, __ F.Supp.2d __, (D.C., S.D.Fla. No. 02-CV-22361-Moore, Dec. 5, 2002), motion for reconsideration, to set aside judgment, or to reopen and reinstate denied, __ F.Supp.2d __ (*id.* Dec. 17, 2002); motions by plaintiff for disqualification of judge and for sanctions against all defendants, denied, May 21, 2003.

18. The defendants' conduct in all of the foregoing related actions was similar to their conduct in this Court, in the repeated assertion of frivolous and indefensible positions, resort to

repeated applications for reargument or reconsideration of virtually every adverse decision no matter how minor, failure and refusal to abide by the simplest orders of the various courts, and the like, vastly multiplying the court and attorney time necessary to deal with their frivolous claims.

19. Again, the nature of defendants' conduct is illustrated most clearly by the reactions of the courts themselves – just as this Court sanctioned them, so also the Appellate Division sanctioned them;⁷ the United States District Court for the Southern District of New York twice sanctioned Judith and Mark Herskowitz;⁸ the Second Circuit Court of Appeals sanctioned Judith and Mark Herskowitz;⁹ and the United States Bankruptcy Court for the District of New Jersey found Judith Herskowitz in contempt,¹⁰ as well as rendering a lengthy description of her conduct in its opinion concluding the bankruptcy action (Exhibit D hereto).

20. During the pendency of all of the foregoing litigation, Charney sought to enforce the New York judgments in Florida, where Judith and Mark Herskowitz now reside, Robert Herskowitz appeared to have taken up temporary residence, and all the Herskowitzes were believed to

⁷Herskowitz v. Hon. Harold J. Tompkins, 184 A.D.2d 402, 585 N.Y.S.2d 386 (1st Dept. 1992), appeal dismissed, 80 N.Y.2d 1023, 607 N.E.2d 818, 592 N.Y.S.2d 671 (1992) (\$5,000.00 sanction, \$650.00 costs; satisfied as to Robert and Mark Herskowitz pursuant to settlement; unpaid to date by Judith Herskowitz).

⁸Herskowitz v. Charney, No. 93 CIV 5248 MGC (S.D.N.Y. July 28, 1994) (on remand from Second Circuit) (\$2,100.00 sanction for refusal to make discovery; satisfied as to Mark Herskowitz pursuant to settlement; unpaid to date by Judith Herskowitz); id., (S.D.N.Y. March 8, 1995) (\$2,310.00 additional sanction, satisfied as to Mark Herskowitz pursuant to settlement; unpaid to date by Judith Herskowitz, and dismissal with prejudice for continuing refusal to make discovery); appeal dismissed, No. 95-7696 (2d Cir. July 24, 1995).

⁹Mark Herskowitz and Judith Herskowitz v. Susan Charney, No. 93-9020 (2d Cir. Dec. 7, 1993) (frivolous appeal dismissed with \$2,500.00 sanctions against plaintiffs-appellants; sanction not paid until Second Circuit issued Writ of Body Attachment, and United States Marshals besieged Judith Herskowitz in the Manhattan apartment of Robert Herskowitz).

¹⁰In re North Jersey Trading Corp., 177 B.R. 814, No. 93-31620-SAS (Bkrtcy. D.N.J. Feb. 1, 1995) (judgment of contempt against Judith Herskowitz), aff'd, No. 95-2876 (D.C., D.N.J. Oct. 2, 1995).

have assets. The attempted domestication of the New York judgments in Florida resulted in a five-year odyssey of its own, as the defendants at first misled the Florida courts into believing that this Court had not properly determined its own personal jurisdiction, then implacably refused to accept the result when that indefensible holding was reversed.

(A) The Herskowitzes challenged enforcement in Florida of this Court's judgments, on the alleged ground that this Court neither had personal jurisdiction over them, nor gave them a sufficient hearing on the issue of jurisdiction. Notwithstanding the repeated litigation of those issues before this Court and the Appellate Division, the Florida trial court – disregarding the principles of comity, of full faith and credit, and of res judicata – held that this Court's judgments should be disregarded as having been entered without jurisdiction over the Herskowitzes. Charney v. Herskowitz, No. 93-22964; 94-669; 94-3614; Herskowitz v. Charney, No. 94-5714; 94-2887; 94-472 (Dade County Circuit Court; six consolidated cases; order entered Nov. 2, 1995).

(B) Charney obtained reversal on appeal of the adverse Florida decision, Charney v. Herskowitz, 689 So.2d 1101 (Fla. 3d DCA 1997), mandamus dismissed, 699 So.2d 1373 (Sup. Fla. 1997); on remand the lower court at first refused to enforce, holding that Charney had appealed only individually, and not on behalf of the corporation, whereby the reversal went only to the small judgments obtained herein on behalf of Charney individually, and not the many millions of dollars of derivative judgments in favor of Charney on behalf of the corporation. Charney v. Herskowitz, No. 94-472 (Dade County Circuit Court, Feb. 10, 1998). This outlandish holding was likewise reversed, the appellate court holding that its prior reversal had gone to the entirety of the action, and that all parts of this Court's judgments were enforceable in Florida. Charney v. Herskowitz, No. 95-03406 (Fla. 3rd D.C.A. Sept. 16, 1998).

21. The latter decision of the Florida Third District Court of Appeal is the last substantive decision by the Florida courts in this case, it is no longer appealable, and it is now final for all purposes, whereby the Florida courts are in complete accord with this Court, recognizing that this Court's judgments are entitled to full faith and credit and are enforceable in all jurisdictions.

22. Judith Herskowitz nevertheless continues mounting collateral attacks upon the final result, both in the Florida courts and the federal courts, as well as attacking the settlement entered into by her own sons. Herskowitz v. Charney, petition for writ of mandamus dismissed, ___ So.2nd ___ (Sup. Fla. No. 94,439, July 9, 1999); motion for clarification and rehearing denied, ___ So.2nd ___ (Sup. Fla. No. 94,439, Sept. 21, 1999); Herskowitz v. Charney, post-affirmance "motion to dismiss and to strike" denied, ___ So.2nd ___ (Dade Co. Circuit Court No. 94-472, Dec. 10, 1999); motion for reconsideration, motion to strike, and motion for disqualification denied, ___ So.2nd ___ (Dade Co. Circuit Court No. 94-472, Dec. 29, 1999); consolidated on appeal with appeal by Judith Herskowitz from order entered July 6, 1999, in No. 94-5714, vacating judgments as against Robert and Mark Herskowitz in Florida pursuant to settlement; both affirmed per curiam, ___ So.2nd ___ (Fla. 3d DCA No. 3D99-2043, No. 3D00-145, Oct. 4, 2000); motion to recall mandate denied, ___ So.2d ___ (Fla. 3d DCA No. 3D95-3406, Nov. 22, 2000); motion for rehearing and clarification denied, ___ So.2nd ___ (Fla.3d DCA No. 3D00-145, Consolidated No. 3D99-2043, Dec. 16, 2000); motion to vacate and set aside order dated December 16, 2000 and Supplemental motion to recall mandate denied, ___ So.2d ___ (Fla. 3d DCA No. 3D95-3406, Jan. 31, 2001); motion for clarification and reconsideration denied, ___ So.2d ___ (Fla. 3d DCA No. 3D95-3406, Mar. 12, 2001); motion [by Herskowitz] to dismiss [her own] appeal denied, ___ So.2d ___ (Fla.3d DCA No. 3D00-145, Consolidated No. 3D99-2043, May 22, 2001); motion to recall

mandate and motion for clarification denied, __ So.2d __ (Fla.3d DCA No. 3D00-145, Consolidated No. 3D99-2043, July 18, 2001); “motion for clarification and to state basis in law for the denial of appellant’s motions” denied, __ So.2d __ (Fla.3d DCA No. 3D00-145, Consolidated No. 3D99-2043, November 21, 2001); motion to reconsider denied, __ So.2d __ (Fla.3d DCA No. 3D00-145, Consolidated No. 3D99-2043, January 2, 2002); “motion to state legal basis for court’s ruling of ‘denied’” denied, __ So.2d __ (Fla. 3d DCA No. 3D00-145, Consolidated No. 3D99-2043, February 6, 2002). *See also, Judith Herskowitz v. Steven Delibert, Susan Charney, Karen E. Bezner, as Trustee for North Jersey Trading Corp., Hon. Alan R. Schwartz, Hon. Melvia B. Green, and Hon. Mario B. Goderich, as Judges of the District Court of Appeal of Florida 3rd District, dismissed sua sponte, __ F.Supp.2d __, (D.C., S.D.Fla. No. 02-CV-22361-Moore, Dec. 5, 2002), motion for reconsideration, to set aside judgment, or to reopen and reinstate denied, __ F.Supp.2d __ (id., Dec. 17, 2002); Motion for Disqualification of District Judge Moore, and Motion for Sanctions, denied (id., May 21, 2003).*

23. All of the foregoing litigation has been accompanied by the continuing drumbeat of the Herskowitzes’ vendetta of frivolous disqualification and recusal motions against any judge who dared to rule against them; again, while all of the motions were uniformly frivolous, and uniformly — with but one exception — wholly unsuccessful, they required attorney time for response, and still further extended and multiplied the proceedings in this and many of the connected cases herein.^{11/}

^{11/} At least eleven motions have been brought, against nine different judges, including: Charney v. North Jersey Trading Corp., Supreme Court, New York County No. 24517/1988, motion for disqualification of Justice Tompkins dated November 21, 1991; Herskowitz v. Charney, U.S.D.C., S.D.N.Y. , No. 93 CIV 5248 (MGC), motion for disqualification of District Judge Cedarbaum, denied, Aug. 18, 1994; Charney v. North Jersey Trading Corp., Dade County Circuit (continued...)

24. In addition to the attacks on judges, defendants have not hesitated to attack plaintiff's counsel as well. Besides the actions instituted directly against Charney's lead counsel, Steven Delibert, Esq., in this Court (§ 17.(A)(1), *supra*), and in the federal courts in Florida (§ 17(A)(6), *supra*), Judith Herskowitz has filed two separate disciplinary complaints against Florida counsel, Eric Christu, Esq., both entirely frivolous, and both dismissed, but both requiring the time, energy, and expense of counsel to prepare responses.

25. Finally, even after obtaining the judgments against the Herskowitzes, and leave from the Bankruptcy Court to enforce them, no voluntary payment of the judgments was forthcoming from any of the Herskowitzes. Instead, settlement finally occurred only because the undersigned discovered that Robert Herskowitz held valuable co-op conversion "insider rights" with respect to a large New York apartment. The undersigned, on behalf of Charney and of North Jersey Trading Corporation, instituted a turnover proceeding in this Court against third parties, in order to reach those co-op conversion "insider rights" which constituted the Herskowitzes' only known substantial asset in New York, a proceeding resisted as bitterly as every other aspect of this action. Matter of Application of Susan Charney (Claire Friedlander, et al.), Supreme Court, New York County No. 113775/95, judgment entered Sept. 1, 1995, affirmed, 233 A.D.2d 147, 649

(...continued)

No. 94-669 CA (27), Motion for Disqualification of Judge Capua, July 29, 1994; Charney v. North Jersey Trading Corp., Dade County Circuit Court No. 94-3614 CA (09), Motion for Disqualification of Judge Greenbaum, Dec. 28, 1994; Charney v. North Jersey Trading Corp., Dade County Circuit Court No. 94-3614 CA (09), Motion for Disqualification of Judge Goldman, June 25, 1999; Herskowitz v. Charney, Dade County Circuit Court No. 94-472 and consolidated cases, Motion for disqualification of Judge Siegal, denied Dec. 29, 1999; Charney v. Herskowitz, Fla. 3rd DCA No. 95-03406, Motion for Disqualification of Chief Judge Schwartz, October 7, 1998); In re North Jersey Trading Corp., Bankr., D.N..J. No. 93-31620/SAS, Motions for Disqualification of Judge Stripp, February 21, 1995; October 24, 1996; April 19, 1999; Herskowitz v. Delibert, U.S.D.C., S.D.Fla. No. 02-22361-CIV-MOORE, motion for disqualification of District Judge Moore, denied, May 21, 2003.

N.Y.S.2d 145 (1st Dept. 1996), leave to appeal denied, ___ A.D.2d ___, No. M-7481 (1st Dept. Jan. 28, 1997); leave to appeal denied, 89 N.Y.2d 815, 681 N.E.2d 1302 (1997).

Settlement with Robert Herskowitz and Judith Herskowitz.

26. On or about September 16, 1998, prior to Charney's learning of the September 16, 1998, final order in her favor in the Florida state-court litigation, she entered into an oral settlement agreement with Robert and Judith Herskowitz^{12/}. Despite the oral "agreement", the settlement could not be reduced to writing until December, 1998, after many additional months of extended multi-party negotiations, in which the Herskowitzes brought in still additional new counsel, which was concluded only by a threat to re-open the turnover proceeding regarding Robert Herskowitz's co-op conversion rights on the ground of his bad-faith settlement negotiations. Charney, the Receiver herein, and the Bankruptcy Trustee all finally agreed to the settlement, rather than face the extended uncertainties of continued litigation with the Herskowitzes, which would have raised such novel and difficult issues as the effect on an ostensibly rent-controlled tenancy (of Robert Herskowitz), of attachment of his co-op conversion rights by a judgment creditor.

27. The settlement agreement provided that Robert and Judith would pay \$150,000.00, and would surrender any claims to the assets of North Jersey Trading Corporation remaining in the Bankruptcy Court (at that time, believed to be slightly over \$450,000, after allowance for remaining trustee commissions and other expenses of administration; in fact, finally totalling approximately \$512,000.00 when turned over to this Court's Receiver on or about August 14, 2000); and that Charney and the Receiver in return would provide satisfactions and/or consent to

^{12/}Judith Herskowitz was not and is not a party to the settlement.

vacatur or dismissal of all judgments and warrants in all courts, and all other claims of any kind, against Robert and Mark. (Copy of Settlement Agreement annexed as Exhibit H.)

28. Because of the settlement's potential effect on assets subject to the jurisdiction of the Bankruptcy Court, and because of the requirements of New York Business Corporation Law §626(d), the settlement agreement was submitted to the Bankruptcy Court for approval, which was granted, over the opposition of Judith Herskowitz. In re North Jersey Trading Corp., ___ B.R. ___ (Bkrcty. D.N.J. Apr. 19, 1999) (Exhibit G hereto), appeal dismissed, ___ F.Supp. ___ (D.C., D.N.J., No. CIV. 99-5208 (GEB)), affirmed, ___ F.3d ___ (3d Cir. No. 00-5144, Nov. 16, 2000); motion for rehearing and rehearing en banc denied, ___ F.3d ___ (3d Cir. No. 00-5144, Dec. 28, 2000); "motion for clarification of the order denying motion for rehearing and to stay issuance of mandate" denied (3d Cir. No. 00-5144, Jan. 22, 2001).

29. The Bankruptcy Court's order approving the settlement directed that the \$150,000.00 paid by Robert and Mark Herskowitz be paid over to the Bankruptcy Trustee, by reason of which it was added to the surplus already in the Trustee's hands.

Conclusion of Bankruptcy Case.

30. The Herskowitzes' initial motivation in bringing the corporation into Bankruptcy Court was plainly to frustrate this Court – wherein a motion for entry of judgment against them was then pending – and to frustrate the mortgagee of North Jersey's property, who had commenced foreclosure proceedings. Unfortunately for their game, the undersigned was able to direct the Bankruptcy Court's attention to their egregious mismanagement of the corporation and its property, to their shifty and dishonest litigation tactics, and to the reasons for this Court's appointment of a Receiver, all of which brought about the appointment of a bankruptcy trustee

who ultimately sold the building at a surplus, and retained the funds for distribution as directed by the courts.

31. Therefore, upon the Bankruptcy Court's approval of the settlement, and the completion of minor remaining matters of administration, the Bankruptcy Court on the Trustee's motion dismissed the case and directed disbursement of the remaining surplus in the Trustee's hands^{13/} to this Court's receiver, as the custodian having jurisdiction of the corporation's assets prior to the intervention of the Bankruptcy Court. In re North Jersey Trading Corp., No. 93-31620 (SAS) (Bkrcty. D.N.J.) (Copy of Decision dated July 10, 2000, Exhibit D; and Order dated August 9, 2000, Exhibit E); motion for reconsideration and clarification denied, __ B.R. __ (Bkrcty. D.N.J. Oct. 31, 2000); *appeal dismissed*, Herskowitz v. North Jersey Trading Corp., No. 01-CV-1392 (D.C., D.N.J., May 31, 2001).

32. No appeal was taken from the District Court's May 31, 2001, dismissal of Judith Herskowitz's appeal from the Bankruptcy Court's final order of dismissal, whereby the dismissal of the bankruptcy case is final in all respects.

33. Pursuant to said Order of the Bankruptcy Court entered on August 9, 2000, on information and belief the Bankruptcy Trustee on or about August 14, 2000, transferred to this Court's Receiver, Paul Windels, III, Esq., the sum of approximately \$663,759.68, representing substantially all of the known assets of North Jersey Trading Corporation.

34. The within motion accordingly seeks disbursement of said sum, together with interest accruing since August, 2000, in the amount of \$18,376.32, all to be applied to partial payment of

^{13/} Except for a small reserve fund of \$13,975.00 directed to be retained by the Trustee, to allow for payment of final administrative costs in the bankruptcy, including the Trustee's anticipated legal fees on Judith Herskowitz's inevitable appeal of the dismissal.

outstanding counsel fees for this successful shareholder's derivative action, in accordance with the provisions of New York Business Corporation Law §626(e).

Benefit to the Corporation

35. When Charney commenced this action, in 1988, the Corporation and its assets were in the process of being hijacked by the majority faction of shareholders, and the Corporation was embarked on several unlawful courses of action. But for this litigation, there is no doubt whatsoever that the entire value of the corporation and its assets would have disappeared into the pockets of the controlling faction of shareholders, leaving nothing for Susan Charney — a 40% shareholder — and nothing for the substantial creditors who were, finally, paid in full in the course of the bankruptcy proceeding, only because of Charney's maintenance of this litigation and her intervention in the bankruptcy proceeding.

36. At the commencement of this action, the corporation's primary asset — a 54-unit multiple dwelling at 200 Riverside Drive at the corner of 92nd Street, in Manhattan — was in poor and deteriorating condition. There were innumerable violations outstanding; there were apartments that were completely uninhabitable due to physical deterioration; there was litigation with tenants; there were rent-strikers. Apart from the rent-strikers and the uninhabitable apartments, rent was not being collected on numerous other apartments — at least some of them apparently vacant, which the controlling shareholders claimed was pursuant to a plan (unlawful, if true) to increase the number of vacancies in contemplation of a cooperative conversion; others apparently occupied, but not producing rent for the corporation, for reasons which could be guessed but never could be determined with certainty.

37. Most tellingly, at no time whatsoever would the controlling faction disclose the books

and records of the corporation, no matter what the cost of hiding them. A “balloon” mortgage was due in 1989, shortly after this action was instituted; the defendants would not disclose enough from the books to permit Charney to consent to the necessary refinancing. This Court ordered production of the books, pursuant to BCL §624; the defendants refused disclosure, even on pain of contempt. The bankruptcy trustee sought the books; the defendants denied being able to locate them.

38. In addition, when the bankruptcy trustee took control of the corporation, she found that it had filed neither state nor federal income tax returns, nor numerous other tax returns, for a period of several years.

39. When this Court ordered an accounting, the defendants failed to appear and present evidence, and the corporate books continued to be unavailable. On the basis of public records, and such fragmentary materials as Charney was able to assemble from other sources, the Referee in the accounting was able to determine that a shortage existed of at least \$2,104,963.33 in diverted rents, for the period from 1985 through 1993; that defendants had failed to account for the sum of \$200,000.00, as proceeds of mortgages; and that by their willful causation of an unreasonable number of vacancies, had caused a diminution of the present value of the property in the amount of \$960,000.00.

40. It is plain, in short, that the individual defendants were well on the way to stripping the corporation of every dime of its assets, and that every dime’s worth of the value realized on the sale of the corporation’s assets in the bankruptcy court — nearly three million dollars — and every dime available to be paid out to creditors — nearly two million dollars — as well as every dime remaining today to be applied to legitimate corporate purposes, is there only because Charney instituted and maintained this litigation and obtained appointment of a receiver, because Charney was successful in obtaining appointment of a trustee to take control of the building when

defendants sought refuge in the Bankruptcy Court; and because Charney and her counsel continued to prosecute this action, and all the related actions, despite considerable hardship to herself and to counsel.

41. It is also plain, that if the counsel fees incurred in obtaining that result are dismayingly large, it is the one party who will doubtless complain the loudest, Judith Herskowitz, who is almost entirely responsible for that result, with her scorched-earth tactics of litigation, and her adamant and unyielding refusal to concede any point, no matter how trivial, in any aspect whatsoever of this extended litigation.

Services Rendered and Payments Received - Steven Delibert.

42. In the more than twelve years that this matter was in active litigation, from the time I was first retained by Susan Charney in the summer of 1988, until the end of my relatively active role in September, 2000, I recorded fully **4,742.53 hours** of billable time, which even at the reduced rate of \$170.00 per hour which I agreed to charge at the commencement of this case, aggregates fees in the amount of \$806,230.10.^{14/} I have additionally recorded disbursements in the amount of \$91,323.38, for filing fees, court reporters' charges, travel expenses, Lexis legal research, out-of-pocket payments to associate counsel, photocopying, faxing, long distance telephone, postage, express and courier charges, witness fees, etc., etc. My total charges herein are thus \$897,553.48. All of these charges were contemporaneously recorded at the time the services were rendered or the expenses incurred. Initially — during approximately the first year —

^{14/} Virtually, but not quite literally, all of my time herein has been charged at said rate of \$170 per hour. The bills I have rendered have varied slightly from that amount, because in a few instances where I have been required to perform work of a clerical or paralegal nature, I have billed my time at reduced rates as low as \$25 per hour. Also, in a few instances, early in the proceedings, my attorney time charges were inadvertently recorded at \$200.00 per hour, the rate I was generally charging at that time.

charges were recorded manually. Thereafter, from September, 1989, until the present, charges were recorded by use of the computerized "Timeslips" personal computer program, which is widely recognized as the leading time and billing program for use by attorneys. I will not burden the Court with the literally hundreds of pages of records on which these charges are recorded, but the same exist in my files and will be furnished if the Court should require. All of these charges are for legal work actually and necessarily performed, and for disbursements actually and necessarily incurred, in connection with the within action and the numerous related actions described herein.

43. Against my total charges of nearly \$900,000.00, I have been paid a total of \$120,961.87 — \$68,500.00 paid by Susan Charney personally; \$49,961.87 awarded by the Bankruptcy Court for various services, on two separate applications and paid by the Bankruptcy Trustee from the corporation's assets (a third application was deferred and never decided, on the ground that when it was submitted, this Court and the Florida courts were in disagreement about the finality of this Court's judgments, and the Bankruptcy Court could not reach a determination in such circumstances); and \$2,500.00 received on account of the sanctions imposed against Judith Herskowitz by the Second Circuit. I have credited the additional sum of \$12,500.00, to account for what appeared to be an anomaly in the manner in which the Timeslips program accounted for prior payments, at the time it was first installed; although in retrospect I believe the credit was given erroneously, I have not reversed it.

44. I have an unpaid balance, accordingly, of **\$767,904.74**, for my work through September, 2000.

45. In the ordinary case, it would be appropriate at this point to bring to the Court's

attention the other factors normally considered in determining a fee award, because in the ordinary case, they would support the application of a substantial multiplier to my basic hourly fee. This case has been pursued at very considerable personal and professional cost to myself and my family. When this case commenced, I had a thriving and growing practice, with several substantial national and international clients. The extreme time demands imposed by the defendants' unrelenting, scorched-earth defensive tactics so burdened my practice that I lost those clients, whose needs I was simply unable to serve; the huge — for a single practitioner — unpaid fees and unreimbursed expenses, and the outlandish amounts of work required, have disrupted my credit, my business standing, and my family's comfort and standard of living, and have substantially interfered with my family life as well as my professional life; the substantial possibility of non-payment arising from the peculiar results initially obtained by defendants in Florida, very seriously increased the risks of continuing to litigate this case.

46. At the outset of this litigation in 1988, I was already an experienced attorney, with nearly 20 years of practice. After graduation from NYU Law School in 1971, I became an associate and then a partner with the law firm which eventually became known as Karpatkin, Pollet, Delibert & Beil. In 1981, I left that firm to found my own practice. Throughout that period, I litigated regularly and extensively in the state and federal courts, at trial and appellate levels, and acted as associate counsel in the United States Supreme Court, concentrating particularly on constitutional matters and on matters involving state-federal relations, which eventually became most useful in this action. In addition, as a general practitioner, I obtained knowledge and experience which were of crucial importance to this case, in the areas of real estate, corporation law, and other realms which were of use in consideration of the wide range of issues which ultimately

came to be involved herein.

47. In such circumstances, were the resources available, it would be entirely appropriate for me to request application of a substantial fee multiplier in this case, and to seek fees of several times my presently outstanding balance of more than \$750,000.00.

48. In order to bring this matter to a conclusion, I am nevertheless willing to accept an interim fee award in the agreed reduced amount of \$401,950.94, provided that the same be awarded and accepted without prejudice to application for a further award if any proceeds shall be realized on the judgment in the amount of over \$4,000,000.00 which remains outstanding against Judith Herskowitz; or if it shall be discovered that the corporation has assets which were not disclosed to the Bankruptcy Court during the course of the bankruptcy proceeding.

Services Rendered and Payments Received - Other Attorneys.

William T. Livingston, III

49. Early in the course of the proceedings herein, the controlling faction of North Jersey Trading Corporation caused it to institute the first of their many frivolous, retaliatory actions herein, a purported action against myself and Susan Charney in this Court, on the purported ground that the maintenance of this action had damaged the corporation by preventing it from refinancing its real property. North Jersey Trading Corp. v. Steven Delibert, Esq., and Susan Charney, Supreme Court, New York County Index No. 21933/90, dismissed by this Court with prejudice for plaintiff's failure to make discovery, June 3, 1992.

50. Because I was named personally as a defendant therein, it was deemed advisable to retain separate counsel to defend that action, and William T. Livingston, III, Esq., was accordingly retained.

51. Mr. Livingston obtained completely favorable results, in the dismissal of the retaliatory action, on account of the refusal of the plaintiff therein to comply with this Court's orders regarding discovery, but the action was marked by the same tactics which have marked the entire course of all of these proceedings, with time-consuming stalling, repetition, discharge of counsel, and other dilatory and multiplicative activities, which forced the expenditure of far more time and attorney's fees than would otherwise have been necessary if the action had been litigated in a straightforward manner.

52. In addition to his work on North Jersey Trading Corp. v. Delibert and Charney, Mr. Livingston from time to time during the course of the action rendered assistance on the primary case, with research, writing, consultation, and other contributions to the progress of the proceedings.

53. Mr. Livingston's accompanying affirmation shows that at the time of his participation herein, he was an able and experienced litigator, with extensive background in the state and federal courts, and with experience at large and small New York firms.

54. Mr. Livingston's affirmation also shows that in all he recorded 197.1 hours of attorney time, at his then-customary rate of \$185.00 per hour, for a total fee of \$36,463.50, and disbursements in the amount of \$967.83, resulting in total charges of \$37,431.33; but like all of the attorneys assisting Charney in this case, he has been paid for only a part of his charges, aggregating \$9,245.00. The balance due to him is \$28,185.53, but he has agreed to accept the sum of \$18,000.00 in order to bring this matter to a conclusion, without prejudice to a renewed application in the event any proceeds shall be realized on the judgment in the amount of over \$4,000,000.00 which remains outstanding against Judith Herskowitz; or if it shall be discovered

that the corporation has assets which were not disclosed to the Bankruptcy Court during the course of the bankruptcy proceeding.

Clifford Hark

55. The numerous contacts with Florida and extensive ancillary litigation there required the retention of Florida counsel.

56. Clifford Hark, of Miami, Florida, was accordingly retained to act as such local counsel. Initially, Hark assisted in the appointment of a guardian for the former defendant, Alexander Fried, who resided in Florida and who was not competent.

57. Thereafter, when Judith and Marshall Herskowitz instituted the first of their federal counter-actions, Herskowitz v. Charney, (D.C., S.D.Fla. No. 92-2531-CIV-GRAHAM), retention of Florida local counsel was required under the local Federal Rules, although I bore the laboring oar therein. In addition, when it appeared that there were assets of the Herskowitz defendants in Florida against which the judgments herein might be collected, Mr. Hark instituted the domestication proceedings in Florida which sought to enforce the judgments there.

58. Mr. Hark's affidavit is submitted herewith, showing that he expended nearly 250 hours of attorney time, at his then-customary rate of \$225.00 per hour, for a total fee of \$55,541.12, and incurred \$3,500.00 in disbursements, in the federal and state actions, creating a total bill of \$59,750.00. As further shown therein, Mr. Hark has been paid a total of only \$14,500.00, leaving \$44,541.12 unpaid. Because there are insufficient funds available to pay all counsel, Mr. Hark has agreed to accept the reduced amount of \$25,000.00, in full and final payment of all sums due to him on account of these proceedings.

Eric C. Christu, Esq. and Carlton, Fields, Ward, Emmanuel, Smith & Cutler

59. Eric C. Christu, Esq., has performed invaluable services in this action for over seven years; it was Christu who obtained — and has since defended against all attacks — the reversal of the Florida courts' initial decision which had refused to grant full faith and credit to the judgments entered by this Court against the Herskowitz defendants.

60. Christu was substituted for Clifford Hark in the Florida proceedings in or about October, 1995. At the time he was retained, Mr. Christu was a partner with the firm of Carlton, Fields, Ward, Emmanuel, Smith & Cutler. In April, 1996, he withdrew from that firm and became a member of the firm of Elk, Bankier, Palmer & Christu (now Elk, Bankier & Christu), which continued to represent Charney in Florida. His representation has been continuous through the present, and indeed remains active as he continues to oppose the repeated, frivolous collateral attacks by Judith Herskowitz upon the unsuccessful result of her prior collateral attack in Florida on the judgments entered in this case in New York.

61. Mr. Christu commenced his representation immediately before judgment entered against Charney in the initial domestication proceeding in Florida, at a time when it was too late to avert the entry of judgment. He accordingly undertook the successful appeal from that adverse judgment, and he has skillfully and with dedication defended that successful result against innumerable assaults by the defendants since that time, in the numerous proceedings described at ¶¶ 20 - 24, *supra*.

62. In addition, in the second of Judith Herskowitz's federal counter-actions in Florida, ¶17(A)(6), *supra*, Mr. Christu acted not merely as local counsel, but bore the laboring oar throughout, with assistance from myself from time to time, and with uniformly successful results.

63. Mr. Christu has also been required to spend time responding to Judith Herskowitz's disciplinary complaints against him, however frivolous those were, and as noted, continued to spend time as Judith Herskowitz continued to press her frivolous collateral attacks on the results of the prior litigation here and in Florida, at least through February, 2002.

64. Finally, Mr. Christu was instrumental in several steps necessary to obtain consummation of the settlement with the former defendants, Ronald Herskowitz and Mrs. Herskowitz.

65. As shown by the accompanying affidavits of Mr. Christu and of Hywel Leonard, Esq., Treasurer of the firm of Carlton, Fields, Ward, Emmanuel, Smith & Cutler ("Carlton, Fields"), Mr. Christu while he was with that firm expended substantial attorney time, and incurred substantial costs and disbursements, aggregating approximately \$33,553.56, in connection with this case. The firm was paid the sum of \$5,000.00, leaving outstanding the sum of \$28,553.56 unpaid. As shown by the accompanying affidavit of Hywel Leonard, Esq., Treasurer of that firm, Carlton, Fields has agreed to accept the sum of \$2,500.00, in full and final settlement of these charges, subject to the same reservations asserted by other counsel, that if additional assets be discovered, additional fees may be sought.

66. Also as shown by Mr. Christu's accompanying affidavit, since Mr. Christu joined the firm of Elk, Bankier, Palmer, & Christu, he has recorded 438.2 hours of attorney time, at the rate of \$275.00 per hour, resulting in \$107,876.75 in fees, and has incurred \$15,257.66 in costs and disbursements, for a total charge of \$123,043.41. He has been paid only \$20,163.96 against these charges, leaving an unpaid balance of \$102,879.45. Because Mr. Christu has incurred such extraordinary charges, with a limited investment in the outcome of the case, while undertaking an association with a new firm; and because Mr. Christu continues at the present time to bear the

heaviest oar in resisting the continuing assaults by Judith Herskowitz on the results of her folly, it has been agreed by Charney, the Receiver, and the undersigned, that Christu should be paid \$105,000.00, representing the entire sum of \$102,879.45 which is presently outstanding, and a small additional allowance for the continued collateral attacks which are certain to be mounted by Judith Herskowitz in the future.

Receiver Paul Windels, III, Esq.

67. Receiver Paul Windels, III, Esq., seeks reimbursement for his services at the statutory rate, in the amount of \$17,448.95, plus disbursements of \$2,315.11, or in all \$19,774.95.

68. Receiver Windels has fully earned the amount he seeks herein. As his own accompanying affirmation details at length, he has been actively and productively involved at virtually every stage of this litigation since his appointment by this Court in May, 1991. While the matter was in Bankruptcy Court, he conferred extensively with the mortgagee of the property and with the bankruptcy trustee, seeking ways to resolve the mortgagee's claims; he sought purchasers for the property and/or for the mortgage; he participated in the turnover proceeding which induced Robert and Mark Herskowitz at last to seek settlement, and he participated at length in the extended and difficult discussions which finally did result in settlement with Robert and Mark Herskowitz, the key to the eventual resolution of this litigation; he offered the undersigned numerous valuable suggestions regarding the conduct of various aspects of the litigation in this court, in the bankruptcy court, and in the Florida courts, in order to protect the judgments in favor of the corporation and to realize some recovery on them.

Reimbursement of Susan Charney.

69. Plaintiff Susan Charney, like her attorneys, has withstood considerable hardship as a

result of her attempts to vindicate her rights by defending her family corporation from plundering and destruction at the hands of the defendants. She instituted this action in good faith, with a reasonable belief in her ability to pay the costs and expenses of a reasonably-litigated proceeding, and has instead, like her counsel, found herself trapped in an endless nightmare of frivolous litigation, at considerable risk of personal liability if the initial, adverse result in Florida had been permitted to stand.

70. As shown by her accompanying affidavit, Charney has paid out in excess of \$120,000.00 since the commencement of this action, in counsel fees and disbursements, and just as her counsel are receiving at least substantial part payment for their work, all have agreed that she should also receive a substantial partial reimbursement, and she has agreed to accept the sum of \$110,000.00, subject to the same provisos as her counsel, that if amounts are subsequently recovered on the judgment herein, or if North Jersey is found to have undisclosed assets, she may make further application to the Court for further reimbursement.

Prior Requests for Relief.

71. No prior application has been made for the relief sought herein, except for the applications for partial fee awards made to the Bankruptcy Court as described herein, with the resultant partial payment of a portion of the fees of the undersigned, as set forth in ¶ 43, *supra*.

WHEREFORE, the relief sought herein should be granted, and plaintiff should have such other and further relief as may to the Court appear just and proper.

Dated: New York, N. Y.
May 28, 2003



STEVEN DELIBERT

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