

## ORDER AND JUDGMENT DATED NOVEMBER 22, 1993

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 22<sup>nd</sup> day of November, 1993

PRESENT:

HON. HAROLD TOMPKINS,

JUSTICE

-----X  
SUSAN CHARNEY,

Plaintiff,

ORDER AND  
JUDGMENT

-against-

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

Index No. 24517/88

Defendants.  
-----X

The within action having been referred by Order dated January 20, 1993, to the Special Referee's Calendar, Part 13R, for a hearing on damages to be held on March 1, 1993; and due notice of said Order having been directed to all of the parties; and defendants having failed to appear on March 1, 1993; and the said action on March 1, 1993, having been referred to Hon. Frank B. Lewis, Special Referee, to hear and report; and said referee, after inquest held on March 1, 1993, having made and filed his Report dated March 22, 1993, and entered in the office of the Clerk of this Court on March 23, 1993, stating his recommendation that judgment be entered in favor of plaintiff on behalf of North Jersey Trading Corporation, in the amounts specified in the said Report; and the plaintiff having moved by Order to Show Cause dated March 25, 1993, to modify and confirm the said Report; and

the said motion having duly come on to be heard on November 19, 1993; and it appearing to the Court that on or about November 4, 1993, the defendant Judith Herskowitz filed a Petition in the United States Bankruptcy Court for the Southern District of Florida, by reason of which the within action is stayed as to said defendant; and the plaintiff having made application to the Court on November 19, 1993, to sever and adjourn the said motion only as to the said defendant Judith Herskowitz; and the plaintiff having further made application to the Court to sever the matter of an award of expenses and counsel fees pursuant to Business Corporation Law §626, and for leave to submit an application therefor at a later date; and the Court having heard Steven Delibert, Esq., in support of said motion and applications, and no one having appeared in opposition thereto,

NOW, on reading and filing the Motion by Order to Show Cause dated March 25, 1993; the affirmation of Steven Delibert executed March 23, 1993, and the exhibit annexed thereto, in support of said Motion; the proof of due service of said Motion on each of the defendants; and the Report of Referee Frank B. Lewis dated March 22, 1993; and on the Court's decision from the bench on November 19, 1993; on motion of Steven Delibert, Esq., attorney for plaintiff, it is

ORDERED, that as to defendant Judith Herskowitz, the said motion is severed, with leave to plaintiff to seek further relief from this Court upon disposition by the United States Bankruptcy

Court for the Southern District of Florida, of any application by plaintiff herein for relief from the stay or other or similar relief, without affecting the finality hereof; and it is further

ORDERED, that the matter of plaintiff's application for an award of expenses and counsel fees pursuant to Business Corporation Law §626(e) is severed from the remainder of this action, and plaintiff is granted leave to make application to the Court for such award without affecting the finality hereof; and it is further

ORDERED, that, as to the defendants \_\_\_\_\_ and MARK HERSKOWITZ, the said motion by Order to Show Cause dated March 25, 1993, is GRANTED in all respects; and it is further ORDERED <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that as to the defendants, HERSKOWITZ and \_\_\_\_\_, the report of Hon. Frank B. Lewis, Special Referee, dated March 22, 1993, and entered March 23, 1993, be and it hereby is modified by inserting therein the phrase, "diminution of value resulting from", after the sum "\$960,000.00", appearing on page 2 thereof; and it is further

ORDERED <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that as to the defendants, HERSKOWITZ and \_\_\_\_\_ HERSKOWITZ, said report is in all other respects CONFIRMED; and it is further

ORDERED <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that plaintiff Susan Charney on behalf of North Jersey Trading Corporation recover against defendants \_\_\_\_\_ Herskowitz and \_\_\_\_\_ Herskowitz:

- 1. The sum of \$2,104,963.33, with interest thereon at

the judgment rate from February 1, 1989, in the amount of \$ 910,901.25 through the date of entry hereof; and

2. The further sum of \$960,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 62,965.48 through the date of entry hereof; and

3. The further sum of \$200,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 13,117.81 through the date of entry hereof; making in

all the sum of \$ 425,947.87; and it is further

~~ORDERED, ADJUDGED, AND DECREED,~~ that the plaintiff Susan Charney, personally and individually, recover the sum of

\$ 935.00 costs and disbursements taxed by the Clerk, and it is further

ORDERED, that plaintiff have execution therefor.

E N T N E 264867

STATE OF NEW YORK,  
COUNTY OF NEW YORK, SS:  
I, NORMAN GOODMAN,  
COUNTY CLERK AND CLERK  
OF THE SUPREME COURT,  
NEW YORK COUNTY,  
DO HEREBY CERTIFY

*Norman Goodman*  
NOV 19 1993

THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL FILED IN MY OFFICE ON

11/22/93  
Herskowitz  
4205 N. Meridian Ave.  
Miami Beach, Fla.  
33140

Judgment Creditor:  
Susan Charney,  
individually and on  
behalf of North  
Jersey Trading Corp  
c/o Delbert  
Suite 1606  
277 Broadway  
New York, N.Y. 10007

Judgment Debtors:  
Herskowitz  
Apt. 10B  
490 West End Ave.  
New York, N. Y.  
10024

**FILED**  
NOV 22 1993  
COUNTY CLERK'S OFFICE  
NEW YORK  
65\CHFNLJ06

Celt

A-160  
ORDER AND JUDGMENT DATED JANUARY 21, 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 21 day of January, 1994

PRESENT:

HON. HAROLD TOMPKINS,  
JUSTICE

-----X  
SUSAN CHARNEY,

Plaintiff,

ORDER AND  
JUDGMENT

-against-

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

Index No. 24517/88

Defendants.  
-----X

The within action having been referred by Order dated January 20, 1993, to the Special Referee's Calendar, Part 13R, for a hearing on damages to be held on March 1, 1993; and due notice of said Order having been directed to all of the parties; and defendants having failed to appear on March 1, 1993; and the said action on March 1, 1993, having been referred to Hon. Frank B. Lewis, Special Referee, to hear and report; and said referee, after inquest held on March 1, 1993, having made and filed his Report dated March 22, 1993, and entered in the office of the Clerk of this Court on March 23, 1993, stating his recommendation that judgment be entered in favor of plaintiff on behalf of North Jersey Trading Corporation, in the amounts specified in the said Report; and the plaintiff having moved by Order to Show

Cause dated March 25, 1993, to modify and confirm the said Report; and the said motion having duly come on to be heard on November 19, 1993; and it appearing to the Court that on or about November 4, 1993, the defendant Judith Herskowitz filed a Petition in the United States Bankruptcy Court for the Southern District of Florida, by reason of which the within action was stayed as to said defendant; and the plaintiff having made application to the Court on November 19, 1993, to sever and adjourn the said motion only as to the said defendant Judith Herskowitz; and the plaintiff having further made application to the Court to sever the matter of an award of expenses and counsel fees pursuant to Business Corporation Law §626, and for leave to submit an application therefor at a later date; and Judgment having entered on the 22nd day of November, 1993, against Herskowitz and Herskowitz, and severing the remainder hereof as aforesaid; and the plaintiff having moved by Order to Show Cause dated January 6, 1994, to modify and confirm the said Report as to Judith Herskowitz; and the said motion having duly come on to be heard on January 21, 1994; and it appearing to the Court that on or about December 30, 1993, relief against the Automatic Stay as to defendant Judith Herskowitz was granted by the United States Bankruptcy Court for the Southern District of Florida, by reason of which the within action is no longer stayed as to said defendant; and

it further appearing to the Court that on or about January 5, 1994, the United States Bankruptcy Court for the Southern District of Florida dismissed the bankruptcy proceeding of the said defendant Judith Herskowitz, with prejudice; and this Court having heard Steven Delibert, Esq., in support of said motion for entry of judgment and applications, and no one having appeared in opposition thereto,

NOW, on reading and filing the Motion by Order to Show Cause dated January 6, 1994; the affirmation of Steven Delibert executed January 4, 1994, and the exhibits annexed thereto, in support of said Motion; the proof of due service of said Motion on each of the defendants; and the Report of Referee Frank B. Lewis dated March 22, 1993; and on the Court's decision from the bench on the record on January 21, 1994; on motion of Steven Delibert, Esq., attorney for plaintiff, it is

ORDERED, that the matter of plaintiff's application for an award of expenses and counsel fees pursuant to Business Corporation Law §626(e) is severed from the remainder of this action, and plaintiff is granted leave to make application to the Court for such award without affecting the finality hereof; and it is further

ORDERED, that, as to the defendant JUDITH HERSKOWITZ, the said motion by Order to Show Cause dated January 6, 1994, is GRANTED in all respects; and it is further

ORDERED and ADJUDGED, that as to the defendant, JUDITH HERSKOWITZ, the report of Hon. Frank B. Lewis, Special Referee, dated March 22, 1993, and entered March 23, 1993, be and it hereby is modified by inserting therein the phrase, "diminution of value resulting from", after the sum "\$960,000.00", appearing on page 2 thereof; and it is further

ORDERED and ADJUDGED; that as to the defendant JUDITH HERSKOWITZ said report is in all other respects CONFIRMED; and it is further

ORDERED and ADJUDGED, that plaintiff Susan Charney on behalf of North Jersey Trading Corporation recover against defendant Judith Herskowitz:

1. The sum of \$2,104,963.33, with interest thereon at the judgment rate from February 1, 1989, in the amount of \$ 441,971.09 through the date of entry hereof; and
2. The further sum of \$960,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 77,040.00 through the date of entry hereof; and
3. The further sum of \$200,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 16,050.00 through the date of entry hereof; making in all the sum of \$ 4,300,024.42; and it is further

ORDERED and ADJUDGED, that the plaintiff Susan Charney, personally and individually, recover the sum of

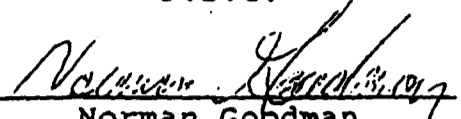
X \$ 700 costs and disbursements taxed by the Clerk; and it is further

ORDERED, that plaintiff have execution therefor.

ENTER



J.S.C.



Norman Goodman  
County Clerk

Judgment Creditor:  
Susan Charney,  
individually and on  
behalf of North  
Jersey Trading Corp  
c/o Delibert  
Suite 1606  
277 Broadway  
New York, N.Y. 10007

Judgment Debtor:  
Judith Herskowitz  
P.O. Box 403543  
3470 Chase Avenue  
Miami Beach, Fla.  
333140

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**FILED**  
JAN 21 1994

NO 268952

COUNTY CLERK'S OFFICE  
NEW YORK

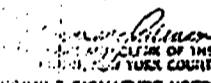
CITY OF NEW YORK,  
COUNTY OF NEW YORK, SS:  
I, NORMAN GOODMAN,  
COUNTY CLERK AND CLERK  
OF THE SUPREME COURT,  
SAY THAT THE ABOVE  
FILED IN

JAN 21 1994

THE ORIGINAL  
FILED IN

1-21-94

THE NAME IS A  
PROPERTY  
OF THE COUNTY  
CLERK'S OFFICE  
AND IS NOT TO  
BE REPRODUCED  
OR COPIED BY  
ANY OTHER  
PERSON.

  
NORMAN GOODMAN,  
COUNTY CLERK OF THE  
COUNTY OF NEW YORK

PROBABLE SIGNATURE USED  
PURSUANT TO SEC. 303,  
COUNTY LAW.

**A-165**  
**SATISFACTION OF JUDGMENT**

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

SUSAN CHARNEY,

Plaintiff,

SATISFACTION OF  
JUDGMENT

-against-

Index No. 24517/88

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

Defendants.

-----X

WHEREAS a judgment was on the 22nd day of November, 1993, recovered in the above entitled action by Plaintiff Susan Charney on behalf of North Jersey Trading Corporation against the defendants Herskowitz and Herskowitz, for the sum of Four Million Two Hundred Fifty One Thousand Nine Hundred Forty Seven Dollars and Eighty Seven Cents (\$4,251,947.87), and in favor of Susan Charney individually against the said defendants for the sum of Nine Hundred Thirty Five (\$935.00) Dollars, which judgment was on the 22nd day of November, 1993, duly docketed and entered in the judgment book in the office of the Clerk of the County of New York at Book No. \_\_\_\_\_, and Page No. \_\_\_\_\_, and whereas said judgment has been wholly paid, together with all interest, fees, costs, or other sums which may have accrued or may be due pursuant to such judgments,

THEREFORE, satisfaction of said judgment is hereby acknowl-

ACKNOWLEDGEMENTS

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

On ~~May~~ <sup>June 3</sup>, 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~~ <sup>June 3</sup>, 1999  
STEPHEN L. MORRIS  
NOTARY PUBLIC, State of New York  
No. 31-4690449  
Qualified in New York County  
Commission Expires Nov. 27, 1999  
11/30/00

  
Notary Public

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

On ~~May~~ <sup>June 7</sup>, 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~~ <sup>June 7</sup>, 1999  
STEVEN A. DELIBERT  
NOTARY PUBLIC, State of New York  
No. 24-4515869  
Qualified in Kings County  
Commission Expires March 30, 1997  
1/31/2000

  
Notary Public

State of New Jersey, County of Union, ss.:

On ~~May 21~~ <sup>May 27</sup>, 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 21~~ <sup>May 27</sup>, 1999  
MARIANNE ORTIZO  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/22/2003

  
Notary Public

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, State of New York  
No. 24-4515869  
Qualified in Kings County  
Commission Expires March 30, 1997  
1/31/2000

edged, and the Clerk of the County of New York is hereby authorized and directed to cancel, satisfy, and discharge the same.

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 SHAREHOLDER 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  
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 Herskowitz  
Sign: Marianne Ortiz  
Print Name: Marianne Ortizio

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

A-168  
ORDER TO SHOW CAUSE FOR PLAINTIFF SUSAN CHARNEY  
DATED SEPTEMBER 28, 1995

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 September 28, 1995.

PRESENT:

HON. HAROLD TOMPKINS,

JUSTICE

-----X  
SUSAN CHARNEY,

Plaintiff,

-against-

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

Defendants.

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

SUSAN CHARNEY,

Petitioner,

for an Order Directing the Turnover  
of Certain Rights in and to  
Cooperative Apartment 10B, 490 West  
End Avenue, New York, N. Y., by

CLAIRE FRIEDLANDER, PAUL BOGONI,  
ARTHUR ROWE, and 490 WEST END  
APARTMENTS CORP.,

Respondents.

-----X

ORDER TO SHOW CAUSE  
TO MODIFY AND EXTEND  
ORDER APPOINTING  
TEMPORARY RECEIVER

Action No. 1  
Index No. 24517/88

Action No. 2  
Index No. 113775/95

UPON reading and filing the annexed Affirmation of Steven Delibert, Esq., executed September 27, 1995, and the exhibits annexed thereto; upon the Order of this Court in Action No. 1, entered May 21, 1991, appointing Paul Windels, III, Esq., as temporary receiver of the assets of defendant North Jersey Trading

Corp.; the Judgments of this Court in Action No. 1, entered, respectively, on November 22, 1993, in favor of Susan Charney on behalf of North Jersey Trading Corp., against 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; and upon the Order and Judgment of this Court in Action No. 2, entered September 1, 1995; and upon all of the proceedings heretofore had in both said actions,

LET the defendants in Action No. 1, Judith Herskowitz, Herskowitz, and Herskowitz, show cause at an IAS Part 13 of this Court, to be held at the Courthouse, Room 252, 60 Centre Street, New York, N.Y., on the 13 day of October, 1995, 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 5106, 5228, and 6401:

(A) Modifying the Order of this Court entered in Action No. 1 on May 21, 1991, by expressly authorizing the Temporary Receiver appointed therein to continue in office notwithstanding the entry of judgment, to take control of certain property of the corporation, and to assist in the enforcement of the judgments entered in said Action No. 1;

(B) Further modifying the said Order, by extending the receivership to include any property of the corporation which may be realized by the enforcement proceedings in Action No. 2 here-

in, in enforcement of the judgments in Action No. 1, and by expressly authorizing the said Receiver to take and hold any other property of the corporation which may result from the proceedings of this or any other Court, within or without this State, and to sue for, collect, enforce, and sell debts or claims of the corporation, until further Order of this Court; to retain and employ counsel; and to have such additional powers, as may appear appropriate upon the return of the within Motion, all of the same to be subject and subordinate to such further orders as may issue from the United States Bankruptcy Court for the District of New Jersey in the matter entitled In re North Jersey Trading Corp., No. 93-31620-SAS;

2. Granting to Plaintiff and Petitioner Susan Charney, the costs and disbursements hereof, and 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:

1. Upon defendants Judith Herskowitz, Herskowitz, and Herskowitz, by certified mail, return receipt requested, with an additional copy by ordinary mail:

(A) To each of said individuals at the addresses appearing upon the papers heretofore served by them as pro se defendants in Action No. 1 herein;

(B) To the law firm of Mordowitz & Lemberg, P.C., heretofore appearing on behalf of Herskowitz and Hersko-

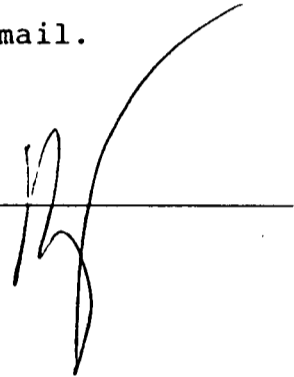
witz in Action No. 2 herein;

(C) To Ira L. Dubistsky, Esq., heretofore appearing on behalf of the said individual defendants in certain proceedings in the courts of the State of Florida;

2. Upon the named respondents in Action No. 2, by mail service upon the attorneys appearing for the said respondents; and that the said service be made on or before September 29, 1995 and that such service shall be deemed good and sufficient service hereof, and shall be deemed complete, notwithstanding the failure or refusal of any of said individual defendants or their counsel to sign for or to accept certified mail.

E N T E R :

\_\_\_\_\_  
J.S.C.

A handwritten signature in black ink, appearing to be 'H. T. Williams', written over a horizontal line. The signature is stylized and cursive.

HON. HAROLD T. WILLIAMS

A-172  
AFFIRMATION OF STEVEN DELIBERT IN SUPPORT  
DATED SEPTEMBER 28, 1995

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

SUSAN CHARNEY,

Plaintiff,

-against-

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

Defendants.

-----X

In the Matter of the Application of

SUSAN CHARNEY,

Petitioner,

for an Order Directing the Turnover  
of Certain Rights in and to  
Cooperative Apartment 10B, 490 West  
End Avenue, New York, N. Y., by

CLAIRE FRIEDLANDER, PAUL BOGONI,  
ARTHUR ROWE, and 490 WEST END  
APARTMENTS CORP.,

Respondents.

-----X

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 in Action No. 1 and Petitioner in Action No. 2), and I submit this affirmation on personal knowledge, in support of plaintiff-petitioner's within application for an Order to Show Cause to modify this Court's prior order appointing a temporary receiver of the

IAS PART 13  
TOMPKINS, J.

ATTORNEY'S AFFIRMATION  
IN SUPPORT OF  
ORDER TO SHOW CAUSE  
TO MODIFY AND EXTEND  
ORDER APPOINTING  
TEMPORARY RECEIVER

Action No. 1

Index No. 24517/88

Action No. 2

Index No. 113775/95

property of the corporate defendant in Action No. 1; and to extend the receivership to property which may be obtained as a result of the enforcement proceedings in Action No. 2.

Reasons for Emergency Application for Relief.

2. This Emergency Application is required, because the defendants in Action No. 1, are seeking on three days' notice, to obtain an injunction in the Florida courts, against further enforcement by New York resident Charney, of enforcement in New York, of the judgment obtained against them in this Court, even as respects assets located in New York. As described more fully at ¶¶ 17-22, infra, notice of the Florida application for injunctive relief was received on Tuesday, September 26; it is returnable Friday, September 29. Unless the emergency relief sought herein is granted, it is likely to become moot, to the irreparable harm of plaintiff Charney and of North Jersey Trading Corporation.

Background.

3. Action No. 1 herein was an extended and bitterly litigated shareholder's derivative action, in which this Court ultimately:

(A) Determined 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;

(B) Held the defendants Judith Herskowitz, Herskowitz, and Herskowitz in contempt, for failure and

refusal to produce books and records in accordance with this Court's Order pursuant to BCL §624, and for failure and refusal to make discovery;

(C) Ordered an accounting of the Herskowitzes' management of the property, which was conducted before a referee at inquest on the Herskowitzes' default in appearing;

(D) On the report of the referee, entered final judgments in favor of Susan Charney on behalf of North Jersey Trading Corp., against Herskowitz and Herskowitz, on November 22, 1993, in the amount of \$4,251,947.87; and against Judith Herskowitz, on January 21, 1994, in the amount of \$4,300,024.42. (Copies of judgments annexed hereto as Exhibit A.)<sup>1/</sup>

4. During the course of Action No. 1, this Court appointed Paul Windels, III, Esq., as temporary receiver of the New York property of North Jersey Trading Corp., upon Charney's showing of

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<sup>1/</sup> Separate judgments entered, because of the Herskowitzes' manipulation of the bankruptcy courts. After the decision of the referee, and before entry of his formal Report and Recommendation dated March 22, 1993, 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., No. 93-31620-SAS, described more fully at ¶ 6 et seq., infra. (They did not so inform Charney, until after she had moved this Court for entry of judgment on the referee's report.) No sooner had Charney obtained relief from the automatic stay therein, than Judith Herskowitz commenced her own Chapter 11 proceeding. In re Judith Herskowitz, No. 93-14360-BKC-AJC, Bkcty. S.D.-Fla. Charney thereupon obtained an order temporarily severing Judith Herskowitz, without prejudice, and directing entry of judgment against and ; when Judith's bankruptcy proceeding was dismissed with prejudice, judgment entered in Action No. 1 against her, as well.

apparent improprieties in management by the Herskowitzes, including particularly, dramatic reductions in the amounts of rental income which the Herskowitzes acknowledged receiving, in comparison with the amounts realized when Charney had been actively involved in management. (Copy of Order Appointing Receiver annexed hereto as Exhibit B.)

5. Notwithstanding the appointment, the temporary receiver never assumed control of any property of the corporation, because pre-empted by the virtually simultaneous appointment of a receiver in one of several mortgage foreclosures then pending, Nathanson v. North Jersey Trading Corp., Supreme Court, New York County Index No. 9134/91, Order appointing receiver entered May 24, 1991. Because of the subsequent pendency of the bankruptcy proceeding in New Jersey, and control of the corporation's assets by the trustee therein, the matter of the receivership has appeared be moot until the present.

Need for a Receiver for Proceeds of the Bankruptcy Proceeding.

6. The Herskowitzes caused the corporation to file a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey, on or about March 17, 1993. By order entered October 14, 1993, Charney obtained relief from the automatic stay, in order to pursue Action No. 1 herein; and appointment of a Trustee of the corporation's assets, to keep the Herskowitzes from regaining control. Thereafter, Charney obtained further relief from the stay, for the express purpose of

permitting her to seek enforcement of the judgments entered on behalf of the corporation, subject to the requirement that the proceeds of such enforcement be delivered to the Bankruptcy Trustee. (Copy of Order granting further relief, dated August 5, 1994, annexed hereto as Exhibit C.)

7. Ultimately, the Bankruptcy Court determined that no re-organization was reasonably possible, in large part because of the irreconcilable disputes among the shareholders. The corporation's real estate was accordingly sold by the Bankruptcy Court, on August 31, 1994. The sale was subsequently affirmed by the United States District Court (No. 94-4505(CSF), Nov. 7, 1994), and the Third Circuit dismissed the corporation's appeal. (No. 94-5771, August 6, 1995). Substantially all creditors have been paid; and the Trustee has informally estimated that at least several hundred thousand dollars will remain for distribution to the shareholders.

8. The Bankruptcy Court has expressed its unwillingness, however, to involve itself in the disputes among the shareholders, with which it is not familiar. It would accordingly be appropriate for that Court to return any remaining proceeds to the jurisdiction of this Court, where the disputes among those parties originated; and Charney intends to move for such relief, at the appropriate time.

9. Because this Court's order of May 21, 1991, appointing the receiver in Action No. 1, only contemplated a temporary re-

ceivership of what was then a functioning parcel of real estate, it is appropriate for this Court now to issue a further order, giving the Receiver the power to take and hold such assets as may be released by the Bankruptcy Court, before requesting that Court to so release the funds.

**Need for Receiver of Proceeds of Enforcement Actions in New York.**

10. Following the entry of judgment in Action No. 1, Charney has sought to enforce the same, primarily in New York and in Florida, with limited success.

11. In New York, the primary asset of the defendants located so far has been the "insider rights" owned by Herskowitz individually, and by Herskowitz as heir and/or as personal representative of the late Alexander Fried, to purchase cooperative apartment No. 10B at 490 West End Avenue in New York. The contract purchase price is \$190,000.00; the apartment has been informally valued at anywhere between \$500,000.00 and \$700,000.00; and the rights are therefore presumptively valued at \$300,000.00 to \$500,000.00.

12. Charney accordingly commenced Action No. 2 herein, successfully seeking an order and judgment directing the sponsors and the apartment corporation to turn over the Herskowitzes' contract to the sheriff for sale. This Court entered such judgment on September 1, 1995. (Copy of Judgment in Action No. 2 annexed as Exhibit D.).

13. At the time Charney commenced Action No. 2, it appeared

that by the time of its conclusion, Charney would still be subject to the orders of the New Jersey Bankruptcy Court, and that any proceeds of the sale in Action No. 2 would simply be turned over to the Bankruptcy Trustee for further distribution, in accordance with the Bankruptcy Court's prior orders. (Exhibit C, supra.)

14. It now appears, however, for the reasons stated in Paragraph 7, that the bankruptcy case, and the authority of the Bankruptcy Trustee, may be concluded before any sums are realized from the sale of the assets in Action No. 2; and it is accordingly necessary for provision to be made for the safe custody of those proceeds, pending determination by this Court of their ultimate disposition.

Need for Authority for Receiver to Enforce Judgments.

15. In Florida, Charney has filed transcripts of the New York judgments, in order to enforce them against various assets believed to be held by the defendants in that state, where Judith and Herskowitz now reside, and Herskowitz appears to be attempting to establish a residence.

16. The Herskowitzes have purported to challenge the judgments of this Court, 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 this Court's express determination of its own jurisdiction, on Charney's motion for default against the defendants and the corpora-

tion's cross-motion for dismissal;<sup>2/</sup> and notwithstanding this Court's later determination that the Herskowitzes by their conduct had waived any further challenge to personal jurisdiction;<sup>3/</sup> and notwithstanding the Appellate Division's express affirmance;<sup>4/</sup> and notwithstanding the Appellate Division's express determination, in a separate proceeding commenced by the Herskowitzes themselves, that any confusion in the record had been brought on by the Herskowitzes' own conduct;<sup>5/</sup> and notwithstanding the dismissal with prejudice by the United States District Court for the Southern District of New York, of an action in which the Herskowitzes asserted identical challenges to this Court's jurisdiction;<sup>6/</sup> and notwithstanding the sanctions, contempt findings, and fines imposed on the Herskowitzes by this

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<sup>2/</sup> Decision dated April 9, 1991 (Exhibit E hereto), and Order entered May 21, 1991, Exhibit B, supra.

<sup>3/</sup> Decision and Order entered October 16, 1991 (copy annexed as Exhibit F).

<sup>4/</sup> Charney v. North Jersey Trading Corp., 184 A.D.2d 409, 587 N.Y.S.2d 144 (1st Dept. 1992).

<sup>5/</sup> Application of Judith Herskowitz, Individually and as Guardian of Alex Fried, ----- Herskowitz and ----- Herskowitz v. Honorable Harold J. [sic] Tompkins, et al., Appellate Division, First Department Original No. 6044/91, dismissed, with sanctions against Herskowitz petitioners, 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).

<sup>6/</sup> Mark Herskowitz, individually and as Personal Representative of the Estate of Alex Fried, deceased, and Judith Herskowitz v. Susan Charney, No. 93 CIV 5248 (MGC), U.S.D.C., S.D.N.Y. Mar. 7, 1995, appeal dismissed, No. 95-7696, 2nd Cir. July 24, 1995.

Court, by the Appellate Division, by the Bankruptcy Court for the District of New Jersey, by the District Court for the Southern District of New York, and by the Second Circuit,<sup>7/</sup> the Herskowitzes have prevailed on a General Master in Florida to recommend to a judge, that the principles of comity, of full faith and credit, and of res judicata all be disregarded, and that this Court's judgments be disregarded as having been entered without jurisdiction over the Herskowitzes.<sup>8/</sup>

17. Still more incredibly, the Master has recommended that Charney's prosecution of all proceedings in enforcement of the judgments -- even those pending in this Court, for enforcement of its own judgments, on behalf of a citizen of this state -- be stayed pending action on his recommendation; and the Herskowitzes on virtually no notice whatsoever, have succeeded in bringing on a motion to enjoin Charney from further enforcement proceedings anywhere, including this court itself! (Notice of Hearing dated September 22, 1995, returnable September 29, faxed to Charney's Florida counsel without supporting papers or notice of relief sought, on Friday afternoon, Sept. 22, prior to Jewish holiday of

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<sup>7/</sup> All of which fines and sanctions remain unpaid, except for those imposed by the Second Circuit, which were paid when the Second Circuit issued a writ of body execution, and the United States Marshals besieged Judith Herskowitz in Robert's apartment.

<sup>8/</sup> Report of General Master John R. Farrell to Hon. Rosemary Usher Jones, Herskowitz v. Charney, Dade County Circuit Court No. 94-472 CA (32), and five related actions, Aug. 28, 1995; copy annexed as Exhibit G.

Rosh Hashanah on Monday, Sept. 25; full Notice with supporting papers first received on September 26; Exhibit H hereto.)

Irreparable Injury.

18. It is plain that if the Herskowitzes are permitted to proceed with their apparent plan to frustrate the ability of this Court to enforce its own judgments, even temporarily, both Charney and North Jersey Trading Corporation are likely to be irreparably injured, as the Herskowitzes may succeed in hiding their assets in Florida, or spiriting them out of Florida and out of the country; this Court's processes are likely to be frustrated; and its judgments are likely to be rendered ineffectual.

19. It is likewise plain, that there will be no readily available remedy, if the Herskowitzes in fact succeed in hiding or disposing of their assets during the pendency of any injunction obtained in Florida, while Charney seeks to obtain relief by means of appeal or otherwise.

20. Charney accordingly requests, that this Court grant to the Receiver appointed herein, the power pursuant to CPLR 5106 and 5228, to take such steps as may be necessary, to enforce the judgments obtained in Action No. 1 and Action No. 2, if Charney is prevented from doing so.

Prior Requests for Relief.

21. No prior application has been made for the relief sought herein.

Emergency Relief Required.

22. Emergency relief is imperative herein, because Charney's undersigned counsel first learned on Tuesday, September 26, 1995, of the Herskowitzes' application returnable in the Florida courts on Friday, September 29, for injunctive relief against further proceedings herein. Unless this Court acts by September 28, all of the relief sought herein may be moot, and Charney and the corporation will almost certainly suffer immediate, irreparable injury.

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.  
September 28, 1995

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STEVEN DELIBERT