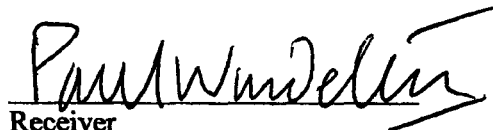


PLEASE TAKE FURTHER NOTICE THAT, pursuant to CPLR Rule 2214, all answering papers must be served at least seven days before the return date of this motion.

Dated: Scarsdale, New York
July 23, 2008

Yours, etc.

PAUL WINDELS III

A handwritten signature in black ink that reads "Paul Windels III". The signature is written in a cursive style with a horizontal line underneath the name.

Receiver
187 Garth Road
Scarsdale, New York 10583
(212) 374-9260

Attorney for Paul Windels III, Receiver

TO: SUSAN CHARNEY
585 West End Avenue
New York, New York 10024
Plaintiff-Respondent *pro se*

JUDITH HERSKOWITZ
P.O. Box 403543
Miami Beach, Florida 33140
Defendant-Appellant *pro se*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

----- X
SUSAN CHARNEY,

Plaintiff-Respondent,

New York County
Index No. 24517/88

- against -

JUDITH HERSKOWITZ,

Defendant-Appellant,

and

NORTH JERSEY TRADING CORPORATION,
ALEXANDER FRIED, [REDACTED],
and [REDACTED],

Defendants.
----- X

AFFIRMATION IN SUPPORT OF MOTION
TO DISMISS APPEAL

PAUL WINDELS III, an attorney duly admitted to practice before this Court, affirms
under penalty of perjury:

1. I am a member of the Bar of this Court and am a respondent on this appeal. I was appointed receiver of the assets of North Jersey Trading Corporation, Inc. ("North Jersey") pursuant to an order of the Supreme Court, New York County, dated May 21, 1991, which was affirmed by this Court. *Charney v. North Jersey Trading Corp.*, 184 A.D.2d 409, 587 N.Y.S.2d 144 (1st Dep't 1992). My appointment was continued by an Order of the Supreme Court for New York County dated November 21, 1995, which Order was entered on or about November 24, 1995. I submit this Affirmation in support of my motion to dismiss the appeal herein.

2 This appeal is taken from the July 27, 2007, Order of the Supreme Court for New York County (Hon. Sherry Klein Heitler, J.), denying reargument of the Supreme Court's October 26, 2006, Order approving my accounting and granting my motion to be discharged and for fees and disbursements. Copies of those Decisions and Orders and their respective Notices of Entry are annexed hereto as Exhibits A and B, respectively.

3. My accounting related to the distribution of funds pursuant to the final Orders of this Court from which no appeal has been taken, specifically the Supreme Court's April 13, 2004, Decision and Order granting the application made jointly by plaintiff and myself for the distribution on default of defendant-appellant Judith Herskowitz, and the Court's October 12, 2004, Decision and Order denying Ms. Herskowitz's motion to vacate the April 13 Order. Copies of those Decisions and Orders (together with Notice of Entry of the October 12 Order) are annexed hereto as Exhibits C and D, respectively.

4. This action is a derivative action brought by Susan Charney, a shareholder in North Jersey. The other known shareholders are defendants Judith, ██████, and ██████

North Jersey is a privately held, family-owned corporation whose business was the operation of an apartment building on Riverside Drive in New York City.

5. On remand following this Court's decision in the related action captioned *Matter of Herskowitz v. Tompkins*, 184 A.D.2d 402, 585 N.Y.S.2d 386, 388 (1st Dept. 1992), the defendants refused to pay the sanctions ordered by this Court, and failed to produce the books and records of North Jersey or appear for depositions as directed by the Supreme Court. The Supreme Court found defendants (including Judith Herskowitz) in contempt and ordered them to turn over their shares in North Jersey by Order dated September 18, 1992, and entered under both the *Matter of Herskowitz v. Tompkins* and *Charney v. North Jersey Trading Corp.* captions.

In December 1993 and January 1994, the Court further entered judgments against defendants Judith, ██████, and ██████ in this action in the approximate amount of \$4 million.

6. Following my initial appointment, I was prevented from acting as Receiver on account of the prior appointment of a receiver acting on behalf of the mortgage lender in a foreclosure proceeding and the subsequent commencement of bankruptcy proceedings on behalf of North Jersey in the United States Bankruptcy Court for the District of New Jersey in order to block the foreclosure proceeding. On motion by Charney's attorney, the late Steven Delibert, Esq., the Bankruptcy Court appointed a bankruptcy trustee for North Jersey.

7. Subsequent to the commencement of the bankruptcy proceeding, Mr. Delibert learned that Robert and ██████ had conversion rights in a rent controlled apartment in New York City. Charney therefore commenced an action entitled *Matter of Application of Susan Charney/Claire Friedlander et al.*, No. 113775/95 (Sup. Ct., N.Y. Cty.), *aff'd*, 233 A.D.2d 147, 649 N.Y.S.2d 145 (1st Dep't 1996) (the "Turnover Proceeding"), for the purpose of levying upon those rights. The Supreme Court accordingly continued my receivership in both the Turnover Proceeding and in this action by Order dated November 21, 1995.

8. Mr. Delibert, Ms. Bezner, and I ultimately agreed with ██████ and ██████ Herskowitz to settle that proceeding in exchange for payment of \$150,000 into the bankruptcy estate of North Jersey, and that agreement was approved by the Bankruptcy Court. *See In re North Jersey Trading Corp.*, No. 93-31620 (SAS) (Bankr. D. N.J.) Order dated April 19, 1999 (Exhibit E hereto). As part of that settlement, Charney and I executed satisfactions of the judgments entered against ██████ and ██████.

9. Annexed hereto as Exhibit F is a copy of a Memorandum Opinion of the United States Bankruptcy Court for the District of New Jersey dated July 10, 2000.

10. The only distribution of funds I have made (other than my fees and disbursements) was in accordance with final orders of the Supreme Court that have not been appealed and for which the time to appeal has now passed. Specifically, with the agreement of parties in interest to the funds in my possession with the exception of appellant/judgment-debtor Judith Herskowitz (against whom a judgment is pending in this case in the amount of \$4,300,124.42 plus accrued interest since 1994, and who remains subject to the Order that she turn over her shares to the Sheriff), counsel for Charney and I applied to the Supreme Court for an Order directing distribution of those funds by Order to Show Cause dated May 29, 2003.

11. ~~Robert and Judith Herskowitz~~ had agreed not to contest the proposed distribution as part of their agreement to settle the Turnover Proceeding. Judith Herskowitz served papers in opposition to the proposed distribution. Annexed hereto as Exhibit G is a copy of my Reply Affirmation dated October 14, 2003, together with Exhibit A thereto which is a copy of my December 13, 1999, Affirmation to the Bankruptcy Court (exhibits to my December 13 Affirmation and the other Exhibits to my October 14 Reply Affirmation are omitted). That Reply Affirmation in part responded to Ms. Herskowitz's false and outrageous accusation that, by moving in open Court regarding the distribution of funds, I was somehow defrauding the Bankruptcy Court.

12. After Ms. Herskowitz failed to appear for argument of the application on three separate occasions despite having been ordered to appear and despite having promised to appear, the Supreme Court on April 13, 2004, granted the application on default and directed that the distribution be made as proposed. (Exhibit C hereto). I have made payment of the funds in my possession as directed by the Court's April 13, 2004, Decision and Order (other than my

application for fees and expenses, which I paid as directed by the Court's October 26, 2006, Order (Exhibit A hereto).

13. Ms. Herskowitz applied in by Order to Show Cause dated June 2, 2004, to vacate her default. By Opinion and Order dated October 12, 2004 (Exhibit D hereto), the Supreme Court denied that application. Notice of Entry of the October 12, 2004, Opinion and Order was served on December 13, 2004, and filed on December 20 (See Exhibit D hereto). I have received no notice of any appeal of that Order. Moreover, when I inspected the minute book for this action most recently on February 8, 2008, after Ms. Herskowitz's time to appeal had expired, the minute book did not contain any record of an appeal having been taken.

14. In sum, each of the payments I have made as Receiver (other than the fees and disbursements awarded to me when my accounting was approved) has been made specifically pursuant to the Order of the Supreme Court and that Order has not been appealed.

15. In response to the October 12, 2004, Decision and Order, Ms. Herskowitz filed a number of motions, including motions to vacate the default judgment that had been entered against her over ten years earlier in this case and the even earlier order directing her to turnover her shares in *Herskowitz v. Tompkins*. By Decisions and Orders entered in this case and *Matter of Herskowitz v. Tompkins* dated June 8, 2005 (copies of which together with their respective notices of their entry are annexed hereto as Exhibits H and I, respectively), the Supreme Court denied all of Herskowitz's motions and further directed that Herskowitz refrain from filing any further motions without written permission from the Court. I served notice of entry of those decisions on September 12, 2005, and have received no notice of any appeal of those Decisions and Orders. Moreover, when I inspected the minute book for this action and *Matter of*

Herskowitz v. Tompkins most recently on February 8, 2008, after Ms. Herskowitz's time to appeal had expired, the minute book did not contain any record of an appeal having been taken.

16. I moved for approval of my accounting, for fees and expenses, and to be discharged as Receiver in September 2005. Annexed hereto as Exhibit J is a copy of an Order of the Supreme Court for New York County dated March 23, 2006, in connection with that motion. In response to one of Herskowitz's objections, that Order directed me to publish further notice of my accounting and to provide further notice to the Attorney General of New York of these proceedings, which I did.

17. Annexed hereto as Exhibit K is a copy of the table of contents of the purported brief on appeal of Judith Herskowitz, which is dated July 1, 2008, and which was filed on or about July 7, 2008.

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

Dated: Scarsdale, New York
July 23, 2008


PAUL WINDELS III