

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

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SUSAN CHARNEY, :
 : IAS PART 30
 : HEITLER, J.
 Plaintiff, :
 : Index No. 24517/88
 - against - :
 :
 NORTH JERSEY TRADING CORPORATION, :
 ALEXANDER FRIED, JUDITH HERSKOWITZ, :
 [REDACTED] :
 :
 Defendants. :
 :
----- X

MEMORANDUM OF LAW IN OPPOSITION TO
MOTION FOR DISQUALIFICATION

Paul Windels III, a Receiver pursuant to Order of this Court dated May 21, 1991, respectfully submits this Memorandum of Law in opposition to the motion of defendant Judith Herskowitz to disqualify Hon. Sherry Klein Heitler, the Justice of the Supreme Court currently assigned to this case, from this case. Herskowitz has already moved to disqualify Justice Heitler on at least two occasions, which motions have previously been denied by this Court by decision dated February 16, 2005. As with all her previous motions, Herskowitz seeks to do so based on her disagreement with a decision of the Court, in this instance the Court's March 23, 2006, Decision and Order regarding the Receiver's motion for approval of his accounting.

That Herskowitz may disagree with the Court's decision does not warrant recusal in the Court's discretion. See *Burdick v. Shearson American Express, Inc.*, 160 A.D.2d 642, 559 N.Y.S.2d 908 (1st Dept.), *leave to app. denied*, 76 N.Y.2d 706, 560 N.Y.S.2d 988 (1990) (affirming denial of recusal motion based on out of court statements by judge to attorneys under

discretion standard); *Conti v. Citrin*, 239 A.D.2d 251, 657 N.Y.S.2d 678 (1st Dept. 1997) (affirming denial of recusal motion as within trial court's discretion where judge witnessed alleged assault that was subject of separate action between parties); *People v. Grier*, 273 A.D.2d 403, 709 N.Y.S.2d 607 (2d Dept. 2000) (affirming denial of recusal motion as within discretion of trial court). Without further burdening the Court, with repetition The Receiver respectfully refers the Court to the arguments set forth in his prior Memoranda of Law dated October 13, 2004, in opposition to Herskowitz's prior motions for disqualification and to the Court's February 16, 2005, decision in this case, none of which have been appealed.

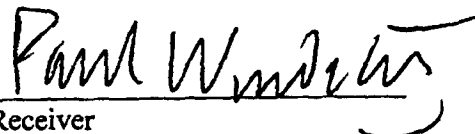
CONCLUSION

For the reasons set forth above, the motion for a disqualification should be denied, together with such other and further relief as the Court may deem just and proper.

Dated: Scarsdale, New York
June 15, 2006

Respectfully Submitted,

PAUL WINDELS III



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