

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 19 day of January, 1993.

PRESENT:

HON. HAROLD TOMPKINS,

JUSTICE

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IN THE MATTER
OF
THE APPLICATION OF

JUDITH HERSKOWITZ, individually and
as the guardian of ALEX FRIED, [REDACTED]

ORDER AND
JUDGMENT

Petitioners,

Index No. 23002/92

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

-against-

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

Respondent.

SUSAN CHARNEY, Plaintiff in the
Court Below,

Additional Respondent.

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An Order having been duly granted by this Court in the above-entitled proceeding on the 18th day of September, 1992, and entered in the office of the Clerk of New York County on the 21st day of September, 1992, requiring and directing the Petitioners JUDITH HERSKOWITZ, [REDACTED] to turn over to the Sheriff of the City of New York, the certificates for their shares of

stock in NORTH JERSEY TRADING CORPORATION, within twenty (20) days after service upon them of a copy of the said Order with Notice of Entry; and satisfactory proof having been presented to this Court that a copy of said Order with Notice of Entry was thereafter duly served upon each of said Petitioners by mail on the 21st day of September, 1992; and it appearing from the Affirmations of Steven Delibert, Esq., attorney for the Additional Respondent and Judgment Creditor Susan Charney, executed December 16, 1992, and January 4, 1993, that after the expiration of twenty-five (25) days thereafter, when the time provided in said Order for such turnover expired, the said Petitioners refused and wilfully neglected to abide by, obey, or comply with the terms of the said Order, and have continued to do so, and are now in complete default in complying therewith; and it further appearing from said Affirmations of Steven Delibert, Esq., and the exhibits annexed thereto, that said Petitioners had personal knowledge of the said Order and of the contents thereof; and

Additional Respondent Susan Charney having applied to this Court for an Order to punish the said Petitioners for their failure and refusal to obey the said Order entered on the 21st day of September 1992, and an Order to Show Cause having been duly granted on the 18th day of December, 1992, directing said Petitioners to Show Cause at an IAS Part 13 of this Court, at the Courthouse, 60 Centre Street, New

York, N.Y., on the 5th day of January, 1993, why said Petitioners should not be punished for such failure and refusal, and proof of due and timely service of the said Order to Show Cause, in the manner directed therein, upon each of the said Petitioners having been presented to the Court; and said application having duly come on to be heard; and

It appearing to the Court from the conduct of the Petitioners throughout the course of this proceeding and the related proceedings before this Court, that personal service of this Order in the manner specified in CPLR 308, §1, 2, and 4, is not practicable; and

The Court having received a letter dated January 3, 1993, purporting to be sent by one of the Petitioners, and signed "Herskowitz", seeking adjournment of the said application without stating any lawful reason therefor; and

It appearing that the said Petitioners have wilfully and intentionally, wholly failed, neglected, and refused to obey the order for the turnover of their shares of stock as aforesaid;

NOW, on reading the Affirmation of Steven Delibert, Esq., executed the 4th day of January, 1993; the Affirmation of Steven Delibert, Esq., executed the 16th day of December, 1992, with the exhibits annexed thereto; the Order to Show Cause dated and issued the 18th day of December, 1992, and the proof of service thereof; the Order heretofore entered on the 21st day of September, 1992, and the proof of service

thereof; and

The Court having heard Steven Delibert, Esq., attorney for Additional Respondent Susan Charney, in support of the application; and there being no appearance in opposition thereto, and

The Court having rendered its decision and findings in open Court on the 5th day of January, 1993,

Now, on motion of Steven Delibert, Esq., attorney for Additional Respondent, Susan Charney, it is

ORDERED, that the application of the Petitioners made by letter dated January 3, 1993, for adjournment of the motion, is denied in all respects; and it is

ORDERED, that the motion to punish the Petitioners, JUDITH HERSKOWITZ, [REDACTED], for contempt of court, is granted; and it is

ADJUDGED, that the Petitioners, JUDITH HERSKOWITZ, ROBERT [REDACTED], and each of them, is guilty of a contempt of court in having wilfully disobeyed the Order of the Supreme Court, New York County, entered in the office of the clerk of the said court on the 21st day of September, 1992, a copy of which was duly served on each of the said Petitioners on the 21st day of September, 1992, in that after such service, they and each of them have neglected and refused to deliver to the Sheriff of the County of New York, the certificates for their shares of stock in NORTH JERSEY TRADING CORPORATION; and it is further

ADJUDGED, that the said misconduct of the Petitioners, JUDITH HERSKOWITZ, [REDACTED], and each of them, was calculated to and did actually defeat, impair, impede and prejudice and delay the rights and remedies of the Additional Respondent Charney herein to her actual loss and injury in the sum of SEVEN THOUSAND (\$7,000.00) DOLLARS, being the amount of attorney's fees and expenses incurred as a result of the said Petitioners' misconduct as aforesaid; and it is further

ORDERED, that the said Petitioners, JUDITH HERSKOWITZ, [REDACTED], jointly and severally, are fined the said sum of SEVEN THOUSAND (\$7,000.00) DOLLARS, to be paid to the Additional Respondent Susan Charney, at the offices of her attorney, Steven Delibert, Esq., 277 Broadway, New York, N. Y. 10007, on or before the 4th day of February, 1993, in satisfaction of the damages so sustained by her; and it is further

ORDERED, that upon payment of the said sum of SEVEN THOUSAND (\$7,000.00) DOLLARS, the said sum shall be credited to and applied in reduction of the judgment to be entered hereon to the extent of said payment; and it is further

ORDERED, that the said Petitioners may purge themselves of such contempt and the fine herein imposed will be remitted by the delivery of their shares of stock as aforesaid to the Sheriff of the City of New York, on or before the 4th day of February, 1993; and it is further

ORDERED, that personal service of this order shall be made on Petitioners pursuant to CPLR 308, §5, by serving a certified copy hereof upon each petitioner at the addresses heretofore provided by them for the service of papers herein, by certified mail, return receipt requested, and an additional such certified copy by ordinary mail, on or before January 19, 1993; and it is further

ORDERED, that upon proof by affidavit of service of certified copies hereof in the manner aforesaid, upon the said Petitioners, JUDITH HERSKOWITZ, [REDACTED] HERSKOWITZ, and upon the failure of the said Petitioners, or any of them so served, to deliver their shares of stock as aforesaid to the Sheriff of the City of New York, an application may be made ex parte for an order of commitment directing to the Sheriff of the City of New York or the sheriff of any county within the state wherein the said Petitioners may be apprehended, commanding him forthwith to arrest the said Petitioners, JUDITH HERSKOWITZ, [REDACTED] [REDACTED], to be brought before IAS Part 13 of this Court during the time when such part is in session, to be committed until they shall purge their contempt by complying with the Order of this Court entered the 21st day of September, 1992, by turning over to the Sheriff of the City of New York the shares of stock provided therein; and until the fine provided herein shall be paid, or until they shall be discharged according to law; or for such other

disposition as the court in its discretion shall direct.

ENTER:

Frederic T. Tyler
J.S.C.

Norman Goodman
Clerk

FILED
FEB 10 1993
COUNTY CLERK'S OFFICE
NEW YORK