

Judith Herskowitz
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September 29, 2006

Hon. Sherry Klein Heitler
Supreme Court
60 Centre Street,
Room 438
New York, N.Y. 10007

Re: Charney v. North Jersey et al.,
Index No. 24517/88

Dear Justice Heitler:

I am in receipt of a letter dated September 21, 2006 from a Kelly O'Neill Levy "Court Attorney". With due regard, the orders attached to that letter do not change the fact that I was deprived of standing to object as an interested party to Mr. Paul Windels' III alleged accounting, and was foreclosed from making an appearance and to participate on the purported presentation of his alleged account on September 11, 2006, so as to do it *ex parte*, which binds no one.

The Court's reliance on a June 21, 2006 order saying that defendant was not precluded "from responding to any motions or orders to show cause brought by other parties", has no relevance whatsoever, for the reason, that on the procedure in presenting a receiver's account no motion and no order to show cause is served and in fact what was scheduled for September 11, 2006 was Mr. Windels' "Notice by Receiver of Presentation of Account" relying on B.C.L. §1216 to which no response is provided, but requires the court pursuant to §1216(c) that:

"Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court."

Mr. Windels is fully aware of this statutory requirement which he noted in his numerous publications in noticing his accounting for a hearing in various news media from July 24, 2006 to August 30, 2006 (one of which is attached) in which he stated as follows:

"By Orders of the Court dated March 23, 2006, and July 6, 2006, any interested party is directed to show cause at that date, time, and place why that relief should not be granted."

That date time and place was noted in these publications as well as in his "Notice By Receiver of Presentation of Account" dated August 7, 2006" that he would present his accounting to this Court, at "60 Centre Street, Room 438, New York, New York, on the 11th day of September, 2006, at 11:30 o'clock in the forenoon or as soon thereafter as counsel may be heard" (Copy attached). It was accompanied with his Affirmation and with copies of the aforementioned publications.

However, by Mr. Windels' own description on pg. 4 of his proposed Order Settling Receiver's Account etc., that September 11, 2006 court date was set only for "oral argument". I had already traveled four times from Florida to New York at great expense, which were for brief five, ten minute oral arguments for each side held on June 21, 2004, January 5, 2005, April 5, 2005 and January 23, 2006, when an evidentiary hearing was required. The Court omits from its March 23, 2006 order and from its July 6, 2006 order that it will hear" the "allegations" and "proofs" and so as stated by Mr. Windels, that September 11, 2006 date was set as an "oral argument" on "objections". Since no hearing was set, the requirement of B.C.L. §1216(c) has not been met for settling receiver's account and that September 11th date was a nullity. In fact the only person who appeared in this Court on September 11, 2006, besides Mr. Windels was an attorney for the estate of Mr. Delibert, without any substitution and without any notice of appearance for the estate's executrix. There was no appearance by any of the alleged creditors, particularly, when they never made a claim and their division of the substantial sum of close to \$700,000.00, was based on a private out of court deal with Mr. Windels, without proofs, with no time sheets, no bills for expenses, and without distinguishing services individually for Charney and for the corporation etc.

Furthermore, omitted from this Court's response is any reference to the March 23, 2006 order in which on pages 2 and 3, to avoid that hearing, I was deprived of standing to object as an interested party to Mr. Windels' accounting, and I was expressly foreclosed from participating and to make an appearance in the proceedings on Mr. Windels' accounting stated as follows:

"Herskowitz alone, objects to Windels' submission of his final accounting as Receiver for North Jersey, and his request for commission pursuant to B.C.L. §1217. Herskowitz however, has **no standing to lodge an objection to his accounting**" B.C.L. 1216(c) provides that upon submission of a final accounting by a receiver the court "**shall hear the allegations, objections and proofs of all parties interested** and allow or disallow such account in whole or in part and make a final order" While Herskowitz no doubt would assert an "interest" in this context is defined by subdivision (a) of B.C.L. § 1216 which imbues "the attorney general or any creditor or shareholder" with standing "to apply for an order that the receiver show cause why an accounting or distribution should not be had" where the receiver has not done so within one year qualifying as receiver. Plainly Herskowitz is neither a creditor or shareholder. To the contrary, Herskowitz owes in excess of \$4 million to North Jersey, as there has been a judicial determination that Herskowitz must turn over her shares in North Jersey to the Sheriff of New York County. See Matter of Herskowitz v. Tompkins, Index No. 12002/92 (S.Ct..Y.Cty. Sept.18, 1992) (Tompkins, J.)(Emphasis supplied)

Following that Mr. Windels asserted in his June 12, 2006 letter that "Your Honor ruled [Herskowitz] lacks standing to oppose my accounting". In the July 6, 2005 order, also attached to the September 21st letter, the Court reset Mr. Windels' motion on his accounting for September 11, 2006, and expressly relied on this March 23, 2006 order. Further noteworthy is that in all his

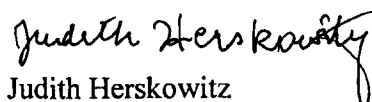
publications of his "Notice By Receiver of Presentation of Account" from July 24, 2006 to August 30, 2006 Mr. Windels expressly noted and relied upon that March 23, 2006 order.

Further omitted from the September 21st letter is the August 8, 2006 order, which was subsequent to all the orders attached to that September 21st letter. That August 8th order (copy attached) denied my request even for the permission to file a motion to vacate that March 23, 2006 order, that included that deprivation of standing to object to Mr. Windels' accounting, which is stated in detail on pages 6 and 7 of the affidavit. It was shown that this was on a misconceived basis, because there was no turnover order for \$4 million dollars owed by me to North Jersey, in fact there was no turnover order for North Jersey. That turnover order was on a \$5,000.00 money judgment in another case to which North Jersey was not a party. Since Mr. Windels purports to act only for North Jersey he cannot rely on it, and at any rate the judgment was wholly paid. The Court disposed of the request to file the motion with a conclusion that "the issues presented therein have been dealt within several previous decisions", whereby, the Court overlooked that there is no prior decision on the issues raised in the motion.

I protested the *ex parte* nature of the proceedings with my paper titled "Herskowitz Has Been Barred From This Court By Disallowing Her Of Standing To Foreclose Her From The Right To Object To Windels' Accounting; So That It Be Conducted *Ex Parte*; Which Binds No One" supported with an Affidavit. Since there is no provision for a response, and the issues have to be presented in an evidentiary hearing, this was no more than a protest. It was accompanied with a letter dated August 31, 2006, in which I expressed my concern for my personal safety that was jeopardized by the March 23, 2006 order in that if I attempted to participate that would be a contempt. The reference in the September 21st letter to a July 6, 2006 order that it lifted an Order of Commitment "to facilitate your appearance without concern of being arrested" has no relevance whatsoever to that March 23, 2006 order, because that July 6th order related to an order issued thirteen years before, a February 19, 1993 order.

Accordingly, Mr Windels' alleged presentation of his purported accounting was not only *ex parte*, but has failed to meet statutory requirements. To avoid these requirements furnishes no basis to deny me standing. The safeguards provided under Article 12, cannot be swept away, literally putting a price tag of \$4 million to exercise not only the statutory right, but the due process right to be heard. Clearly, this matter has not been pursued by Mr. Windels and his associates in accordance with lawful requirements.

Yours truly,


Judith Herskowitz

cc/ Paul Windels III
Susan Charney
N.Y. Atty. General
Fidelity & Deposit Co. of MD.
Justice Jacqueline Silbermann

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

----- x
SUSAN CHARNEY,

Plaintiff,

Index No. 24517/1988
IAS PART 30
HEITLER, J.

- against -

NORTH JERSEY TRADING CORPORATION, *et al.*,


Defendants.
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NOTICE BY RECEIVER OF PRESENTATION OF ACCOUNT

PLEASE TAKE NOTICE that the undersigned will present a full and accurate accounting of all his proceedings as receiver of defendant North Jersey Trading Corporation, to the Supreme Court of the State of New York, County of New York, 60 Centre Street, Room 438, New York, New York, on the 11th day of September, 2006, at 11:30 o'clock in the forenoon or as soon thereafter as counsel may be heard, and will move (a) that the same be allowed and decreed to be final and conclusive upon all creditors and/or shareholders of said corporation, all persons who may have claims against it, any open or subsisting engagement, and all other interested persons, (b) that he shall be authorized to make a final payment and, upon proof of payment thereof, that he be discharged and his bond vacated, and (c) that he be relieved of any alleged omission or default, together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 7, 2006

PAUL WINDELS III



Receiver

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

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

PRESENT: SHERRY KLEIN HEITLER PART 30

Justice

SUSAN CHARNEY,

INDEX NO. 024517/88

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. _____

NORTH JERSEY TRADING CORPORATION,
ALEXANDER FRIED, JUDITH HERSKOWITZ,

MOTION CAL. NO. _____

~~_____~~ and

~~_____~~,

Defendants.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

The court is in receipt of a letter from Judith Herskowitz dated July 28, 2006, including attachments, which was received on August 3, 2006. Upon review of said letter and the attachments thereto, the court finds that notwithstanding that this request is untimely, the issues presented therein have been dealt with in several previous decisions.

Therefore, the court denies permission to allow a motion to be made to vacate this court's decision and order dated March 23, 2006.

This constitutes the decision and order of the court.

Dated: August 8, 2006


SHERRY KLEIN HEITLER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):