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November 18, 2003

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 Judge Heitler:

I have called this Court this morning asking that I be called on the phone when this matter comes before this Court. I am a Florida citizen and reside in Florida and so I have a right to appear before this Court by telephone. I have requested to allow me to appear by telephone as early as on November 14, 2003. Furthermore, as of November 14, 2003 I have not even received that temporary suspension of the warrants of arrest to even make a reservation to come to New York. I have called the Court yesterday and I have spoken to Steve and he told me that under these circumstances I would not be expected to jump on a plane and come and I would be called when the case comes on November 18, 2003. Most certainly otherwise this hearing would proceed *ex parte*. Additionally this hearing is not set for an evidentiary hearing, to require me to come to New York and have to spend over \$500.00 which in my dire financial circumstances I cannot afford. An evidentiary hearing is rightfully requested.

Furthermore this case is not even properly before this IAS General Division. Under Guideline for Assignment of Cases to the Commercial Division, of this Court, Appendix A, Subsection G a party has a right to request that a case not previously transferred out of the Division, be transferred into the Commercial Division if it's a complex commercial matter. It can be done at a hearing or conference, which is now requested. This case meets the threshold monetary requirement of damages totaling \$125,000.00 (exclusive of interest, costs, and attorney's fees) and so this case is not within the jurisdiction of this Division. We need a Commercial Division judge whose expertise and sole activity is in commercial law, as the issues here require the scholarship, experience and a wealth of knowledge in the commercial field. So, this case has to be transferred before the commercial division. Stockholder's derivative suit is specifically named as one of that Division's expertise, whereas this is a General Division, and is not where this case should be. I just came upon this information about the commercial division yesterday.

There are questions here as to whether the court has jurisdiction to entertain Charney's motion for distribution of corporate funds under BCL 626(e). The Order to Show Cause used here is not the proper means to bring this matter before the Court. Under Rule 19 of the Rule of the Justices the Rule to Show Cause was an improper means. Rule 20 does not permit a Rule to Show Cause to be used in a commercial case absent a genuine urgency. This is not an expedited proceeding to ask for \$700,000.00 in fees on affidavits by return date, without an evidentiary hearing. This

especially where it is shown by Charney's own papers that she pursued this whole case individually and there is no evidence that she pursued anything in the name and on behalf of the corporation, and the judgment was entered in favor of Susan Charney on behalf of North Jersey Trading Corporation and not as required in favor of North Jersey Trading Corporation. This \$4.2 million judgment is being treated as her own personal property and not as a corporate assets where the shareholders would have to approve of that distribution agreement and not Charney and her attorneys. Charney's allegations never rose beyond a breach of fiduciary duty her personally and never proved any conversion of corporate assets, but simply a loss of income on apartments because they were kept vacant for co-op conversion or to rehabilitate for market rent. A management decision, that a state court cannot interfere with.

Paul Windels III was also appointed improperly in that November 20, 1995 order not as required under Article 12 for a foreign corporation that North Jersey Trading Corporation is, yet he would claim he is receiver of the property or assets of North Jersey Trading Corporation. However, without this appointment the moneys could not have been transferred to this Court. Judge Tompkins also lacked the commercial expertise and was not in the commercial division. Only in the commercial division can this be looked into Charney's case.

Another issue is the validity of that 4.2 million dollar judgment for which an evidentiary hearing is required as set forth in the moving papers. A void judgment can be attacked collaterally any time. That was pursued in the Florida court and was taken away with an ex parte order. In fact that is a prior pending action that cannot be taken away with an ex parte order manipulated here. No evidentiary hearing was ever held in the Florida court and so the issues claimed in that September 23, 2003 order of the Florida court were not determined. Charney would now use that order in her response in this Court. Under Rule 1.420 of Florida Rules of Civil Procedure an order of dismissal cannot be entered without motion, notice and hearing and so it has no effect on this Court and the order is void. The action is pending in the Florida court and so a stay is properly sought in this Court.

Additionally, a motion to reopen has been filed in the Bankruptcy Court, because the moneys have been released to this Court under the assertion of the trustee upon which an order was entered by the Bankruptcy Court that the estate of North Jersey Trading Corporation was fully administered that all claims of creditors and all administrative expenses were paid. The case was closed in July 2002. All the fees claims in this Court cover the period prior to 2002. For Delibert now to come to this Court to make claims for fees is a fraud on the Bankruptcy Court. So, that is another reason for stay relief.

Sincerely,

Judy Herskowitz

cc: Steven Delibert
Paul Windels
Justice Jacqueline Silbermann