

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 7 day of November, 1993

PRESENT:

HON. HAROLD TOMPKINS, JUSTICE

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SUSAN CHARNEY,

Plaintiff,

ORDER AND JUDGMENT

-against-

NORTH JERSEY TRADING CORPORATION,  
ALEXANDER FRIED, JUDITH HERSKOWITZ,

Index No. 24517/88

Defendants.

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The within action having been referred by Order dated January 20, 1993, to the Special Referee's Calendar, Part 13R, for a hearing on damages to be held on March 1, 1993; and due notice of said Order having been directed to all of the parties; and defendants having failed to appear on March 1, 1993; and the said action on March 1, 1993, having been referred to Hon. Frank B. Lewis, Special Referee, to hear and report; and said referee, after inquest held on March 1, 1993, having made and filed his Report dated March 22, 1993, and entered in the office of the clerk of this Court on March 23, 1993, stating his recommendation that judgment be entered in favor of plaintiff on behalf of North Jersey Trading Corporation, in the amounts specified in the said Report; and the plaintiff having moved by Order to Show Cause dated March 25, 1993, to modify and confirm the said Report; and

the said motion having duly come on to be heard on November 19, 1993; and it appearing to the Court that on or about November 4, 1993, the defendant Judith Herskowitz filed a Petition in the United States Bankruptcy Court for the Southern District of Florida, by reason of which the within action is stayed as to said defendant; and the plaintiff having made application to the Court on November 19, 1993, to sever and adjourn the said motion only as to the said defendant Judith Herskowitz; and the plaintiff having further made application to the Court to sever the matter of an award of expenses and counsel fees pursuant to Business Corporation Law §626, and for leave to submit an application therefor at a later date; and the Court having heard Steven Delibert, Esq., in support of said motion and applications, and no one having appeared in opposition thereto,

NOW, on reading and filing the Motion by Order to Show Cause dated March 25, 1993; the affirmation of Steven Delibert executed March 23, 1993, and the exhibit annexed thereto, in support of said Motion; the proof of due service of said Motion on each of the defendants; and the Report of Referee Frank B. Lewis dated March 22, 1993; and on the Court's decision from the bench, on November 19, 1993; on motion of Steven Delibert, Esq., attorney for plaintiff, it is

ORDERED, that as to defendant Judith Herskowitz, the said motion is severed, with leave to plaintiff to seek further relief from this Court upon disposition by the United States Bankruptcy

Court for the Southern District of Florida, of any application by plaintiff herein for relief from the stay or other or similar relief, without affecting the finality hereof; and it is further

ORDERED, that the matter of plaintiff's application for an award of expenses and counsel fees pursuant to Business Corporation Law §626(e) is severed from the remainder of this action, and plaintiff is granted leave to make application to the Court for Such award without affecting the finality hereof; and it is further

ORDERED, that, as to the defendants \_\_\_\_\_ and

the said motion by Order to Show Cause dated March 25, 1993, is GRANTED in all respects; and it is further

ORDERED, <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that as to the defendants,

\_\_\_\_\_, HERSKOWITZ, the report of Hon. Frank B. Lewis, Special Referee, dated March 22, 1993, and entered March 23, 1993, be and it hereby is modified by inserting therein the phrase, "diminution of value resulting from", after the sum "\$960,000.00", appearing on page 2 thereof; and it is further

ORDERED, <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that as to the defendants,

\_\_\_\_\_, said report is in all other respects CONFIRMED; and it is further

ORDERED, <sup>AND</sup> ADJUDGED, ~~AND DECREED~~, that plaintiff Susan Charney on behalf of North Jersey Trading Corporation recover against defendants

1. The sum of \$2,104,963.33, with interest thereon at

the judgment rate from February 1, 1989, in the amount of \$ 910,901.25 through the date of entry hereof; and

2. The further sum of \$960,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 62,965.48 through the date of entry hereof; and

3. The further sum of \$200,000.00, with interest thereon at the judgment rate from March 1, 1993, in the amount of \$ 13,117.81 through the date of entry hereof; making in all the sum of \$ 425,947.87; and it is further

**ORDERED, <sup>and</sup> ADJUDGED, AND DECIDED,** that the plaintiff Susan Charney, personally and individually, recover the sum of \$ 935.00 costs and disbursements taxed by the Clerk, and it is further

**ORDERED,** that plaintiff have execution therefor.

X

**Judgment Creditor:**  
Susan Charney,  
individually and on  
behalf of North  
Jersey Trading Corp  
c/o DeLibert  
Suite 1606  
277 Broadway  
New York, N.Y. 10007

**Judgment Debtors:**  
Herskowitz  
Apt. 10B  
490 West End Ave.  
New York, N. Y.  
10024

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STATE OF NEW YORK  
COUNTY OF NEW YORK, SS:  
I, NORMAN GOODMAN,  
COUNTY CLERK AND CLERK  
OF THE SUPREME COURT,  
NEW YORK COUNTY,  
DO HEREBY CERTIFY.

*Norman Goodman*  
NOV 19 1993

THAT I HAVE COMPARED THIS  
COPY WITH THE ORIGINAL  
FILED IN MY OFFICE ON

11/22/93  
Herskowitz  
4205 N. Meridian  
Ave.  
Miami Beach, Fla.  
33140

WHEN SET BY  
AND AFFIXED MY  
OFFICIAL SEAL

**FILED**

NOV 22 1993

COUNTY CLERK'S OFFICE  
NEW YORK

SEE DAVID  
COUNTY LAW.

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