

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NEW YORK

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SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION  
ALEXANDER FRIED, JUDITH HERSKOWITZ  
[REDACTED]

Defendants.

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IAS Part 30 Heitler J

Index No. 24517/88

**OBJECTION AND REJECTION OF WINDELS' PROPOSED  
ORDER SETTLING RECEIVER'S ACCOUNT ETC., AND NOTICE**

Mr. Windels purports to move pursuant to Rule 202.48 of the Uniform Rules for the Trial Court of New York for settlement and signature of his proposed order. Although Mr. Windels scheduled it for October 4, 2006 its does not appear on the Court's calendar. Rule 202.48(a) provides for submission for settlement only "after the signing and filing of the decision directing that the order be settled or submitted". No such decision was served on me and upon searching the record of this Court none was found, and was I informed by the clerk in Room 315 and by the clerk in the pro se office, that a signed and filed decision is required under Rule 202.48 and so this is an improper submission. Therefore, I cannot propose a counter order.

Mr. Windels would rely on a May 21, 1991 order for his appointment of Receiver of North Jersey Trading Corporation when no such appointment appears in that order, and no such appointment exists under B.C.L. §1202. While Mr. Windels would assume the mantel of receiver, to seek approval of his final account pursuant to B.C.L. §1216 he is foreclosed by his own claim on pg. 4 that "Herskowitz....failed to appear at **oral argument** on September 11, 2006". So, by his own admission his final account was set only for "oral argument". As I set forth in the

accompanying letter addressed to this Court and incorporated herein (a copy also attached hereto) the requirement under §1216(c) is for a hearing to be set on the final account stated as follows:

“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.”

Hearing is defined in Blackstone’s Law Dictionary, Fifth Edition as “Proceeding of relative formality .....with definite issues of fact or of law to be tried, in which witnesses are heard and parties proceeded against have a right to be heard, and is much the same as a trial”. Unquestionably, an oral argument does not meet the requirements of §1216(c). Furthermore, there is no provision under §1216 to file objections, only that a hearing be held at which interested parties have a right to appear and be heard, and so it is not on papers. Whereby, Mr. Windels’ contorted argument that Herskowitz’s objections were served untimely rings hollow. The papers I served on August 30, 2006 was a protest to the ex parte proceeding on Mr. Windels purported final account. Furthermore, I have a right to withdraw my August 30, 2006 papers served in protest to Windels’ ex parte proceeding, and so it is withdrawn, where he misuses it to create a falsified order.

While Mr. Windels relies on the March 23, 2006 order of this Court, he omits its main objective, which he procured, that “Herskowitz....., have **no standing to lodge an objection to his accounting**”. Mr. Windels’ reasserted this in his June 12, 2006 letter saying that “Your Honor ruled [Herskowitz] lacks standing to oppose my accounting”. After eliminating me from participating in his final account so that he would proceed *ex parte*, Mr. Windels has the temerity or the chutzpah to attempt to procure an order on the basis that “Herskowitz ...has failed to appear”. So, that had I appeared and tried to participate in that final account then I would be

held in contempt and if I did not appear then imply a default. So, that the scheme is that when I appeared I was denied my opportunity, and if I did not then I missed my opportunity.

However, I did not have the opportunity for the additional reason because no hearing was ever set including for September 11, 2006 that Mr. Windels acknowledges was set only for an oral argument. Since that required hearing was never held, that April 13, 2004 order has no relevance, since that was on a private out of court deal by Mr. Windels for which he had yet to account pursuant to §1216(c). That required Mr. Windels if he were a receiver to timely publish his appointment and notice to creditors which he did only after his belatedly designated creditors were paid in July to August 2004, without ever having made a claim, so they could not have been approved as creditors prior to that, in the April 13, 2004 order. As regards that January 23, 2006 date that was likewise only an oral argument.

So, this proposed order is not only sheer harassment and a hoax, but Mr. Windels would write his own ticket to prevail on twisted facts, calculated inaccuracies and in total disregard of applicable law, to create an illusion of an approval of his purported accounting. **Since there was no hearing there is no basis for a decision.** If Windels were allowed to prevail it would amount to the misuse of the bench for legalized robbery.

Dated: September 29, 2005  
Miami Beach, Florida

Respectfully submitted,

JUDITH HERSKOWITZ J.D.  
Defendant Pro se  
P.O. Box 403543  
Miami Beach, Fl. 33140  
Tel:(305) 534-7600

By: Judith Herskowitz  
JUDITH HERSKOWITZ

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

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SUSAN CHARNEY,

Plaintiff,

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

- against -

NORTH JERSEY TRADING CORPORATION, *et al.*,

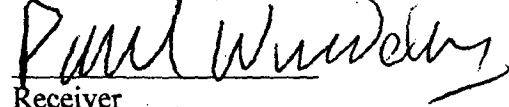
Defendants.  
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NOTICE OF SETTLEMENT OF ORDER

PLEASE TAKE NOTICE that, pursuant to Rule 202.48 of the Uniform Rules for the Trial Courts of New York State, the annexed Order will be submitted for settlement and signature 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 4<sup>th</sup> day of October, 2006, at 9:30 o'clock in the forenoon or as soon thereafter as counsel may be heard. Please take further notice that, pursuant to Rule 202.48(c) of the Uniform Rules for the Trial Courts of New York State, any proposed counter-orders must be made returnable on the same date and at the same place and must be served on all parties by personal service not less than two days, or by mail, not less than seven days, before the date of settlement.

Dated: Scarsdale, New York  
September 22, 2006

PAUL WINDELS III



Receiver

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



September 26, 2005, in opposition to the Receiver's motion for approval of his accounting and for discharge; and

UPON the presentation made by the Receiver of his account before the Court on January 23, 2006, and the presentation by Judith Herskowitz of her objections to the Receiver's accounting; and

UPON the Decision and Order of this Court dated March 23, 2006, directing that the Receiver present his accounting before the Court on June 26, 2006, which was adjourned until September 11, 2006, at 11:30 a.m., at 60 Centre Street, New York, New York, Room 438, and

UPON the Affirmation of Paul Windels III dated September 6, 2006, and the exhibits annexed thereto, and the letter dated June 22, 2006, from Paul Windels III to Hon. Eliot Spitzer, which letter was submitted to the Court at the presentation of the Receiver's account held on September 11, 2006, and

UPON the Response of the State of New York to Notice by Receiver of Presentation of Account, submitted by Neal S. Mann, Assistant Attorney General of the State of New York, and dated August 16, 2006, and

UPON the Decision and Order of this Court dated April 13, 2004, directing distribution of funds held in the possession of the Receiver and the Decision and Order of this Court dated October 12, 2004, denying the application of Judith Herskowitz to vac the April 13, 2004, Decision and Order, and

UPON all prior pleadings and proceedings herein, and

JUDITH Herskowitz having served purported additional objections to the Receiver's accounting on or about August 30, 2006, which date is after the September 30, 2005, return date

of the Receiver's motion for approval of his accounting;

JUDITH Herskowitz having failed to appear before the Court on September 11, 2006, in support of her objections as required under the rules of this Court; and

NO objection having been made to the Receiver's accounting other than that of Judith Herskowitz;

It is hereby ORDERED that:

1. The account of proceedings of Paul Windels III, Esq., as receiver of North Jersey Trading Corporation, be, and the same is, in all things allowed and decreed to be final and conclusive upon all of the creditors of North Jersey Trading Corporation, and upon all persons who have or had claims against it, upon any open or subsisting engagement, and upon all the shareholders of North Jersey Trading Corporation.

2. The Receiver shall retain the sum of nineteen thousand, nine hundred and fifty-nine dollars and seventy cents (\$19,858.70) plus any and all interest accrued thereon since September 1, 2005, for and as his fees and commissions as Receiver and in reimbursement of his expenses as Receiver.

3. The Receiver is found to have published notice of his accounting and to have given notice to the Attorney general of New York and his surety as required under the laws of New York and by the orders of this Court.

4. The Receiver is found to have fully and faithfully carried out his duties and responsibilities as Receiver under the laws of this State and is further relieved of any and all alleged errors or omissions and is discharged as Receiver of North Jersey Trading Corporation.

5. The bond given by the Receiver in the above-entitled matter, which was executed

by Fidelity & Deposit Company of Maryland for the sum of fifty thousand Dollars (\$50,000.00) which said bond was recorded in the office of the Clerk of New York County on January 5, 1996, be, and the same hereby is, cancelled and discharged, and the said bonding company hereby is, and the same hereby is, relieved from further liability upon such undertaking.

6. The objections served by Judith Herskowitz on or about August 30, 2006, are rejected as untimely and on the basis that she failed to appear at oral argument on September 11, 2006, the Court having considered and addressed the timely objections served by Ms. Herskowitz on or about September 26, 2005, and the arguments made by Ms. Herskowitz on January 23, 2006, in support of those objections.

Dated: New York, New York  
 . 2006

ENTER:

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J.S.C.