

Windels now moves for approval of his final accounting for funds held as Receiver, and for discharge as Receiver upon making final payment of the funds remaining in his possession.

Herskowitz opposes the motion, and cross-moves to vacate and set aside this court's decisions and orders of April 13, 2004 and October 12, 2004.¹

At the outset, it should be noted that Windels was appointed Receiver for North Jersey pursuant to an order of this court dated May 21, 1991 (Harold Tompkins, J.), which order was affirmed by the Appellate Division. See Charney v. North Jersey Trading Corp., 184 A.D.2d 409 (1st Dept. 1992). It should also be noted that Windels subsequently published notice of his appointment, called a meeting of the creditors of the corporation, and took an oath as Receiver and filed a bond in accordance with §§ 1204 and 1207 of the New York Business Corporation Law.² Additionally, Windels has submitted a verified accounting of the funds dispersed under this court's order dated April 13, 2004, in accordance with B.C.L. § 1215. Pursuant to B.C.L. § 1217, Windels seeks commissions on the sums received and disbursed, and provides the court with a calculation of those commissions which comports with that statute's requirements.

Herskowitz, alone, objects to Windels' submission of this final accounting as Receiver for North Jersey, and his request for commissions pursuant to B.C.L. § 1217.

Herskowitz, however, has no standing to lodge an objection to this 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

¹ The court notes that Herskowitz has not requested the court's permission to file this cross-motion. Nevertheless, the court will address Herskowitz's cross-motion in the hope of laying these issues to rest, once and for all.

² Windels has provided the court with a copy of the bond and his sworn oath as Receiver.

property) from the bankruptcy trustee to Windels. See In re North Jersey Trading Corp., No. 93-31620 (SAS) (Bankr. D. N.J.) (July 10, 2000). Similarly, as noted above, the Appellate Division has affirmed the court's order appointing Windels as Receiver for North Jersey. See Charney v. North Jersey Trading Corp., 184 A.D.2d 409 (1st Dept. 1992). In any event, the court notes that B.C.L. § 1213 provides that, "[u]pon notice to the attorney-general and upon such notice to creditors or others interested as the court shall direct, the court may, in the furtherance of justice, relieve a receiver from any omission or default, on such conditions as may be imposed, and, on compliance therewith, confirm his action." In this instance, where the Receiver has: taken an oath and posted a bond in accordance with B.C.L. § 1204; has properly published his status as Receiver, as well as called a meeting of the creditors of North Jersey in accordance with B.C.L. § 1207; and has provided a final accounting and request for commissions in accordance with B.C.L. §§ 1215 and 1217, the court finds that the interest of justice is furthered by providing notice to the attorney-general of these proceedings in accordance with B.C.L. § 1213, by ensuring that the Receiver complies with B.C.L. §§ 1215 and 1216's notice requirements, and by otherwise relieving the Receiver of any alleged omissions which have preceded this application.

Herskowitz's additional grounds for challenging this final accounting are found in her cross-motion, which is denied. In decisions and orders of October 12, 2004 and June 8, 2005, this court twice denied Herskowitz's motions to vacate/reargue the court's decision of April 13, 2004, which directed disbursement of the funds in the Receiver's hands. Herskowitz has raised no new grounds and alleged no errors of law that would provide a basis for reversal of that order.

Accordingly, it is hereby

ORDERED that, in accordance with B.C.L. § 1213, the Receiver shall provide a certified copy of this decision and order to the attorney-general of the State of New York, within thirty days

of the receipt thereof; and it is further

ORDERED that, in accordance with B.C.L. §§ 1215 and 1216, the Receiver shall give no less than eight days' notice to the sureties on the bond, and notice to all persons interested in the property of the corporation, of the filing of this final accounting and request for commissions and for permission to resign, and shall do so by publishing such notice once a week for six successive weeks in at least two newspapers of general circulation in New York, setting forth 9:30 a.m. on June 26, 2006, at Room 438, 60 Centre Street, New York, New York 10007 as the date and location at which the Receiver and all interested parties are expected to appear, and the Receiver shall present this final accounting and the court shall hear any objections and concerns of such interested persons to show cause why the Receiver should not be permitted to resign; and it is further

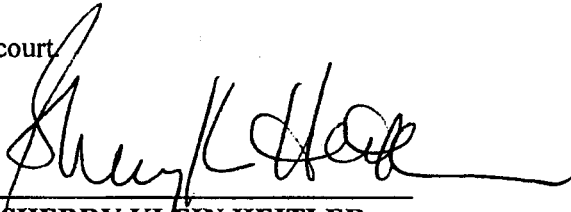
ORDERED that the Receiver's motion for a final accounting, commissions and permission to resign is held in abeyance; and it is further

ORDERED that, as an Order of Commitment was entered on February 19, 1993, directing the Sheriff of the County of New York to Arrest Judith Herskowitz, ~~XXXXXXXXXXXXXXXXXXXX~~ Herskowitz, this court is lifting said Order and Warrant pursuant to a separate Order of today's date if Herskowitz chooses to appear on June 26, 2006 at Room 438, 60 Centre Street, New York, New York 10007; and it is further

ORDERED that Herskowitz's cross-motion is denied.

This shall constitute the decision and order of the court.

DATED: March 23, 2006



SHERRY KLEIN HEITLER
J.S.C.