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SUSAN CHARNEY,

Plaintiff,

-against-

NORTH JERSEY TRADING CORPORATION,
ALEXANDER FRIED, JUDITH HERSKOWITZ,

[REDACTED]

Defendants.

INDEX NUMBER

24517 38

MOTION SUBMITTED:

09 15 92

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In the Matter of the Application

of

JUDITH HERSKOWITZ, Individually,
and As the Guardian of Alex Fried,

[REDACTED]

Petitioners,

For A Judgment Under Article 78 of
the Civil Practice Law and Rules
In the Nature of Prohibition and
In the Nature of a Mandamus

-against-

HON. HAROLD J. TOMPKINS, Justice of
the Supreme Court of the State of
New York, New York County,

Respondent.

(SUSAN CHARNEY, Plaintiff In the
Court Below)

Additional Respondent.
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INDEX NUMBER

13002/92

HAROLD TOMPKINS - Justice:

Plaintiff Charney's motion to hold defendants in contempt for failure to produce the corporate books and records in accordance with this Court's order of June 1, 1992, to direct the Herskowitz defendants to appear for depositions to deem the matters in the notice admitted and for other relief, the Herskowitz defendants' motion for a protective order, plaintiff Charney's cross motion for deposition priority and Charney's motion in the article proceeding for a turnover pursuant to the judgment are all consolidated for disposition and decided as noted below.

The Court notes that once again the Herskowitz defendants' principal arguments contend that the Court lacks jurisdiction. This issue has been resolved by this Court and affirmed by the Appellate Division, New York Law Journal, June 25, 1992, p. 23, c. 4.

Defendant [REDACTED] an attorney admitted to practice law in Florida and defendant Judith Herskowitz had stated on the record on August 18, 1992 that she had graduated from law school. Acceptance of court orders should be familiar to them. The Court again reiterates that it will not consider the ex parte telephone requests for adjournments made by defendant Judith Herskowitz.

The pattern of delay and obstruction by the Herskowitz defendants is noted in this Court's opinion in imposing sanctions, 150 Misc. 2d. 849. The Appellate Division separately

imposed sanctions in the Herskowitz' special proceeding, New York Law Journal, June 25, 1992, p. 25, c. 1. It took note of their consistent duplicative and vexacious motions interposed to delay and harass their adversary. Charney's turnover motion arises out of the judgment entered pursuant to the Appellate Division's order imposing sanctions, costs and disbursements. In the oral argument on the record on August 18, 1992, Judith Herskowitz acknowledged that she had not paid this judgment.

The motion to direct a turnover to the sheriff pursuant to CPLR 5525(a) is granted and the Herskowitz defendants are directed to turnover their shares in North Jersey Trading Corporation within 20 days after service of a copy of this order with notice of entry.

Plaintiff Charney's motion for contempt and cross motion for priority are granted to strike the Herskowitz defendants' pleadings, unless they appear and submit to depositions commencing on October 29, 1992, 9:30 A.M., at the Supreme Court, 60 Centre Street, Room 252, New York, New York.

At oral argument on the record on September 15, 1992, the Court advised the Herskowitz defendants' "messenger" that depositions would commence on October 29, 1992 and continue under a referee's supervision until completed. This Court will not excuse any failure to appear by the Herskowitz defendants on that date. The record in this case is replete with contentions of illness, wholly unsupported, and unreadiness for a variety of dubious reasons. The Herskowitz defendants are now

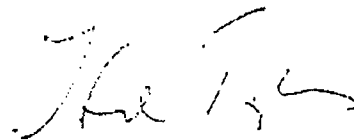
oh notice that pursuant to CPLR 3126 and Judiciary Law 753 that their pleadings will be stricken if they do not comply with this order of the Court, see Mills v Ducille, 170 AD2d 657 (2d. Dept. 1991); Reitte v Entermey Cab Corp., 162 AD2d 259 (1st. Dept. 1990).

The depositions shall continue from day to day until complete with the Herskowitz defendants testifying first and plaintiff Charney thereafter. Pursuant to CPLR 3104, the depositions shall be supervised by a referee. Any failure to answer, or obstructive behavior, shall be referred to this Court for striking of pleadings, contempt, or other appropriate determination. The Herskowitz defendants shall produce the corporate books and records not less than ten days prior to October 29, 1992. The argument concerning timely service of the order to show cause for contempt is patently frivolous since the order to show cause for contempt was clearly served in accordance with Justice McCooe's order.

The motion for protective order is resolved by deeming the notice to admit denied. The Herskowitz defendants have stated that they contest the items in this notice. Pursuant to CPLR 3123(c), the determination that a refusal is unreasonable and the penalty for refusal is resolved at or after trial by the Court.

This decision constitutes the order of this Court. A copy has been mailed to plaintiff's counsel and the Herskowitz defendants.

Dated: *September 18,* 1992



J.S.C.