

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

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SUSAN CHARNEY, : No. 24517 / 1988
 :
 Plaintiff, :
 :
 - against - : AMENDED
 : NOTICE OF MOTION
 NORTH JERSEY TRADING CORPORATION, : FOR PROTECTIVE ORDER
 ALEXANDER FRIED, JUDITH HERSKOWITZ, :
 [REDACTED] : Assigned to:
 : IAS PART 30
 Defendants. : HEITLER, J.
 :
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PLEASE TAKE NOTICE THAT, upon the annexed Affirmation of Paul Windels III, dated July 15, 2003, and the accompanying Memorandum of Law, the undersigned will move this Court at the courthouse thereof, at the Motion Submission Part, 60 Centre Street, Room 130, New York, New York, on September 15, 2003, at 9:30 o'clock in the forenoon or as soon thereafter as counsel may be heard, for an Order, pursuant to Articles 31 and 52 of the New York Civil Practice Law and Rules, protecting him against the Document Production Demand of Judith Herskowitz, dated June 27, 2003, together with such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to CPLR Rule 2214, all answering papers must be served so as to be received at least seven days before the return date of this motion.

Dated: New York, New York
August 6, 2003

Yours, etc.

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(212) 374-9260

Attorneys for Paul Windels III,
Receiver

TO: JUDITH HERSKOWITZ
P.O. Box 403543
Miami Beach, Florida 33140

Defendant *pro se*

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~~XXXXXXXXXXXXXXXXXXXX~~
New York, New York 10024

Defendant *pro se*

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Miami Beach, Florida 33140-2939

Defendant *pro se*

STEVEN DELIBERT, ESQ.
277 Broadway
New York, New York 10007

Attorney for Plaintiff

KAREN E. BEZNER, ESQ.
567 Park Avenue
Scotch Plains, N.J. 07076

Former Trustee in Bankruptcy

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

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: SUSAN CHARNEY, IAS PART 30
: HEITLER, J.
: Plaintiff, :
: - against - :
: AFFIRMATION IN
: SUPPORT OF MOTION
: FOR PROTECTIVE ORDER
: NORTH JERSEY TRADING CORPORATION,
: ALEXANDER FRIED, JUDITH HERSKOWITZ,
: [REDACTED],
: Defendants. :
: ----- x

PAUL WINDELS III, an attorney duly admitted to practice before this Court, affirms,
pursuant to CPLR Rule 2106:

1. I am a member of the Bar of this Court and of the firm of Perry & Windels and am receiver of the assets of North Jersey Trading Corporation (“North Jersey”), pursuant to this Court’s order of May 21, 1991. I submit this Affirmation in support my motion for a protective order, pursuant to Articles 31 and 52 of the New York Civil Practice Law and Rules, against the Document Production Demand of Judith Herskowitz, dated June 27, 2003, a copy of which is annexed hereto as Exhibit A.
2. I have served Objections to Ms. Herskowitz’s Document Production Demand, a copy of which is annexed hereto as Exhibit B.
3. I seek a Protective Order from this Court primarily based on my concern that Ms. Herskowitz has served her Document Production Demand for the improper purposes of harassment and to make some sort of attachment or levy upon a fund of \$682,225.89 (as of April 30, 2003) (the “Fund”) that I am holding in order to prevent me from distributing them pursuant

to the direction of this Court, as I have asked in connection with this Court's pending Order to Show Cause entered May 29, 2003.

4. My concern is not based on idle speculation but on the record of this and parallel proceedings. Specifically, since this Court entered a default judgment against her in this action in the amount of \$4,300,024.42 on January 21, 1994 (*See* Affirmation of Steven Delibert dated May 28, 2003, and submitted in support of the pending Order to Show Cause ("Delibert Aff.") ¶ 12, Ex. A), Ms. Herskowitz has launched a fusillade of collateral attacks on that judgment, all of which have ultimately proved unsuccessful but which have imposed significant cost to plaintiff and myself. Now that over \$680,000 has been recovered and an application has been made to distribute the Fund, and as set forth in more detail below, I believe that this Document Production Demand is yet another attempt to forestall justice in these proceedings.

5. In her instant Document Production Demand, Ms. Herskowitz seeks disclosure of the identity of the bank where I am holding the Fund, which I have asked that the Court direct me to distribute. Although Ms. Herskowitz contends that she wishes to satisfy herself that the Fund is in fact being held by a bank and does exist, given that I have asked that the Court direct me to pay out the Fund, her request is frivolous on its face. If I did not have that amount on hand in the Fund, I would be asking the Court to issue an Order that I could not carry out, effectively placing myself in contempt of Court.

6. Moreover, and as explained in detail in the Affirmation of Steven Delibert dated May 28, 2003, and submitted in support of the pending Order to Show Cause ("Delibert Aff."), Ms. Herskowitz has defied Courts up and down the East coast of the United States, both State and Federal. This Court has repeatedly sanctioned her conduct, Charney v. North Jersey Trading

Corp., 150 Misc.2d 849, 578 N.Y.S.2d 100 (N.Y. Cty 1991) (\$5,000 sanction), twice held her in contempt of Court, Charney v. North Jersey Trading Corp., Index No. 24517/88 (N.Y. Cty), Order entered Jan. 19, 1993 (\$23,500 fine for contempt), and Herskowitz v. Tompkins, Index No. 23002/92 (N.Y. Cty), Order entered Jan. 19, 1993 (\$7,000 fine for contempt), and ordered her arrest for contempt of Court Charney v. North Jersey Trading Corp., Index No. 24517/88 (N.Y. Cty), Order entered Feb, 19, 1993 (Order of Commitment), and Herskowitz v. Tompkins, Index No. 23002/92 (N.Y. Cty), Order entered Feb, 19, 1993 (Order of Commitment).

7. This Court is not alone in sanctioning Ms. Herskowitz and/or holding her in contempt. *See* Delibert Aff. ¶ 18, nn.7-10, for citations to sanctions and orders holding Ms. Herskowitz in contempt issued by the Appellate Division, First Department, the United States District Court for the Southern District of New York, the United States Court of Appeals for the Second Circuit, and the United States Bankruptcy Court for the District of New Jersey.

8. That Ms. Herskowitz has unsuccessfully sought to thwart the judgment of this Court through collateral litigation, including litigation brought against judges sitting in these proceedings (*see* Herskowitz v. Hon. Harold J. Tompkins, 184 A.D.2d 402, 585 N.Y.S.2d 386 (1st Dept 1992), *appeal dismissed*, 80 N.Y.2d 1023, 607 N.E.2d 818, 592 N.Y.S.2d 671 (1992)) and motions for recusal of nine separate judges (*see* Delibert Aff. ¶¶ 17-24, n.11), therefore raises a serious concern that, should I disclose to her the identity of the bank where I am holding the Fund, she will commence some parallel litigation for the purpose of attaching and/or levying on the Fund, thereby impairing the ability of this Court to order their distribution.

9. I am, of course, ready and willing to produce bank records documenting that I have over \$682,225.89 on hand in the Fund for the Court's *in camera* inspection, should the

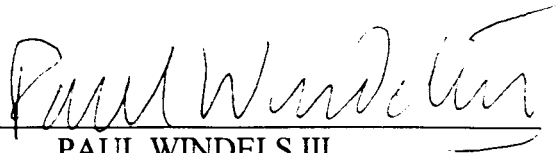
Court deem that necessary.

10. I have made this motion in addition to serving objections to the Document Production Demand because of exigent personal circumstances. Specifically, my wife and I are about to adopt a child in China and have recently learned that we must travel to China in order to receive the child on July 20 and complete her adoption under Chinese law and obtain permission to bring her into the United States following that date. I am therefore seeking the Court's protection in order to prevent Ms. Herskowitz from moving against me during my absence when it will be difficult for me to respond to her motion.

11. I have tried to resolve this matter in good faith. Prior to serving her Document Production Demand, Ms. Herskowitz telephoned me with an oral request for the production of the identity of the bank where I am holding the Fund. I explained to Ms. Herskowitz that I did not believe that she was entitled to that information as a judgment debtor and because of her past behavior. Since receiving her Document Production Demand, I have tried Ms. Herskowitz repeatedly at the telephone number listed on the Document Production Demand without success. Annexed hereto as Exhibit C is a copy of a letter I sent Ms. Herskowitz by express mail requesting an adjournment of the Order to Show Cause because I had recently learned that my wife and I had to travel to China to adopt a child and could not be in Court at the then scheduled return date for the Order to Show Cause. I also tried to telecopy that letter to Ms. Herskowitz at her telephone number because on occasion after more than ten rings the telephone line had given a signal of a fax machine. I have never received any response.

12. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 15, 2003



PAUL WINDELS III