

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

WACHOVIA SECURITIES, LLC,

Plaintiff,

- v -

INDEX NO. 104326/2006

RICHARD A. JOSEPH (individually, as Trustee to the R.J. Alan Co Inc. Profit Sharing Plan Dtd., and as Responsible Individual to Pepper Caylie Kundtz Joseph Coverdell IRA), DELAWARE CHARTER GUARANTEE & TRUST COMPANY d/b/a TRUSTAR RETIREMENT SERVICES (as Trustee to Franklin Scoot Koonce IRA, Dean A. Joseph Coverall IRA, Dennis L. Joseph Coverall IRA, and Pepper Caylie Kundtz Joseph Coverdell IRA), DOUG JOSEPH (as Responsible Individual Dean A. Joseph Coverall IRA and Dennis L. Joseph Coverall IRA), HUDSON SECURITIES, INC., and KOONCE SECURITIES, INC.,

Defendants.

Administrative Order:

By letter dated July 11, 2006, defendant Koonce Securities, Inc. (Koonce), on behalf of all defendants, seeks review, pursuant to Uniform Rule 202.70(f)(2), of the Hon. Bernard J. Fried's Order dated June 27, 2006 transferring this action from a commercial part to a non-commercial part. Plaintiff has not responded to this application.

Uniform Rule 202.70(f)(2) provides that an aggrieved party may seek review of the designation of an action to a non-commercial part within ten days of the party's receipt of such designation. Defendant asserts that it has yet to receive actual notice from the Court, but it confirmed the transfer with the Commercial Division Support Office during the week of July 11, 2006. Therefore, the Court finds the application timely.

Uniform Rule 202.70(b)(1) provides that actions seeking damages in excess of \$100,000 or equitable relief will be heard in the Commercial Division where the principal claims involve or consist of "breach of contract or fiduciary duty, fraud,

misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings. . . ." The nature of this action makes it one that should be assigned to the Commercial Division. A review of the complaint reveals that this action meets the monetary threshold and also seeks equitable and declaratory relief. Further, the action sounds in breach of contract, arising out of a business relationship between the parties, i.e., selling and purchasing securities.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (There two motions (seq. 001 and 002) currently returnable on August 16, 2006).

Dated: August 14, 2006

ENTER: _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION