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July 28, 2016

**VIA ECF AND FACSIMILE (212) 952-2777**

Honorable Shirley Werner Kornreich  
Supreme Court of the State of New York  
County of New York  
60 Centre Street, Room 228  
New York, New York 10007

**Re: Michel Kadosh v. David Kadosh et al.**  
**Index No. 651834/2010**

Dear Justice Kornreich:

I am writing to advise the court of the status of this proceeding. On July 21, 2016 this matter was settled after days of extensive negotiation between the parties and counsel and with considerable assistance from the court. The basic terms of settlement provided that the parties would equally share all of the monies held in the Receiver's escrow account with the exception of \$700,000.00 which would remain in escrow pending the court's determination of the disposition of such remaining upon consideration of the evidence presented at trial in support of the parties' claims in this action. Although the parties agreed to leave \$700,000.00 in escrow, only \$600,000.00 would be distributed to the parties pursuant to the court's determination; the remaining \$100,000.00 would be distributed to charitable organizations.

I have reviewed the documents and communications between counsel, the parties, and the Referee concerning the sale of 213 West 85<sup>th</sup> Street and the disposition of the proceeds of such sale. When the Receiver settled his account, there was just over \$7,000,000.00 remaining in escrow after payment of fees and expenses. In fact, after the sale of the building, an issue arose as Michel had wrongfully taken monies that Chase Bank was refunded to the 213 West 85<sup>th</sup> Street LLC. Michel ultimately reimbursed the LLC for those monies and then as confirmation, the Receiver, Robert Lewis, provided **both parties** and their attorneys with proof of Michel refunding the money he had wrongfully taken, as well as the Receiver's bank statement through March 31, 2015 showing those monies to be redeposited and showing that the Receiver had, as of March 31, 2015, the sum of \$7,038,728.88 in his account. Copies of the emails and the bank statements are attached hereto. As such, Michel Kadosh had **direct** and **personal** knowledge of

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the exact amount of money that remained in the Receiver's escrow account when he negotiated the terms of settlement, agreed to such settlement on the record and provided a sworn allocation as to his knowledge, understanding and assent to the settlement before this court on July 21, 2016.

Notwithstanding the fact that Michel had, in his personal possession, documents from the Receiver identifying the amount of money that remained in escrow since at least March 31, 2016, he returned to court the day after agreeing to the settlement and on July 22, 2016 asked the court to allow him to withdraw from the settlement. Michel attempted to justify his request by alleging that he had been misled and/or misinformed about the amount of money that remained in escrow. He also claimed that it appeared that a substantial amount of escrow money was missing. Despite Michel's claims that he had been misled and/or misinformed, Michel offered to adhere to the settlement if David agreed to double the amount of money that would remain in escrow from \$600,000.00 to \$1,200,000.00. Although David believed Michel's demand was unreasonable and inconsistent with the court's directive that the parties work in good faith to reach an agreement to increase the amount of money that would remain in escrow to an amount that would proportionately reflect the settlement, David agreed to consider Michel's proposal in order to preserve the parties' settlement.

Since July 22, 2016, I have had several conversations with Michel's attorney and as noted above, I have reviewed the Receiver's bank statements and the numerous email communications with the Receiver and counsel concerning the escrow funds. Initially, the court should note that upon further examination of the Receiver's records, it appears that at most there may be \$100,000.00 that is unaccounted for. Michel's counsel has advised that he has spoken with the Receiver and that the Receiver is going to examine his checkbook and records and will provide an explanation for such monies that presently appear to be unaccounted for on Monday, August 1, 2016. I anticipate that the Receiver will provide a valid explanation for the relatively minimal amount of money that appears to be unaccounted for.

As there does not appear to be a substantial issue with the amount of money that remains in escrow, I notified Michel's counsel that David was willing to increase the amount of money that will remain in escrow and be subject to the court's disposition to \$1,000,000.00. Despite our belief that there is a valid settlement in place and despite the fact that Michel's feigned "reasons" to withdraw from the settlement are unjustified, David was willing to accommodate Michel's demand to increase the amount of money to remain in escrow.

However, on July 27, 2016, I was advised by Michel's counsel that Michel is now demanding that unless David agrees to leave \$2,350,000.00 in escrow, Michel will not comply with the settlement agreement. In fact, counsel advised that Michel would not even agree to the \$1,200,000.00 that Michel had proposed! Michel's outrageous and unjustifiable demand is in no way consistent with the settlement. Instead, Michel's demand demonstrates that his request to



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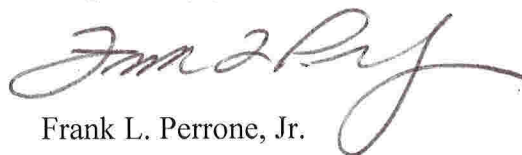
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withdraw from the settlement is not based on any purported misinformation or misunderstanding of the amount in escrow, rather it is based on nothing more than his "change of mind". As such, I ask that Your Honor recall your conversation with David and Eryka Kadosh in Chambers on July 21, 2016, when, after acceding to Michel's demand to increase the amount of money that would remain in escrow from \$300,000.00 to \$600,000.00 and thereafter to \$700,000.00, the court addressed my clients' concern that Michel would try to escape the settlement agreement. I trust that Your Honor will recall the court's assurances to my clients that once finalized and placed on the record, the settlement agreement would be binding and final and Michel would not be permitted to change his mind or withdraw from such settlement agreement.

Based on the foregoing, we respectfully request that the court deny Michel's request for permission to withdraw from the July 21, 2016 settlement agreement and direct the parties to adhere to such settlement agreement as agreed to by the parties and affirmed on the record. Michel's outrageous and unjustifiable demands unequivocally demonstrate that his motive to withdraw from the settlement agreement is not based on his feigned misunderstanding of the amount of money in escrow or concerned over money allegedly missing from escrow. Michel simply does not want to comply with the settlement agreement. There should be no further delay on this matter. We request the court set a date to finish the testimony of David Kadosh and proceed to the conclusion of this matter in accordance with the valid and binding settlement agreement placed on the record before this court on July 21, 2016.

Thank you for your consideration.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Frank L. Perrone, Jr.", written in a cursive style.

Frank L. Perrone, Jr.

FLP/dp  
Enclosures

cc: Paul Sarkozi (*Via Email: [Sarkozi@thsh.com](mailto:Sarkozi@thsh.com)*)