

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: THE ESTATE OF  
SHIRLEY BERNSTEIN,  
Deceased

CASE NO. 502011CP000653XXXXSB  
NOTICE OF MOTION

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL), ROBERT L.  
SPALLINA (BOTH PERSONALLY & PROFESSIONALLY),  
DONALD R. TESCHER (BOTH PERSONALLY &  
PROFESSIONALLY), THEODORE STUART BERNSTEIN,  
AS PERSONAL REPRESENTATIVES ET AL., TRUSTEES,  
SUCCESSOR TRUSTEES AND ESTATE COUNSEL AND  
JOHN AND JANE DOES,

RESPONDENTS.  
\_\_\_\_\_

**NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SHIRLEY  
BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC  
FRAUD BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA  
AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES  
AND THEIR LEGAL ASSISTANT/NOTARY PUBLIC, KIMBERLY MORAN.**

**PLEASE TAKE NOTICE** that upon the accompanying affirmation; Pro Se Petitioner Eliot Ivan  
Bernstein will move this Court before the Honorable Judge Martin H. Colin, Circuit Judge, at the

South County Courthouse, 200 West Atlantic Ave., Delray Beach, FL 33401, at a date and time to be determined by the Court, for an order to Freeze Estates of Shirley Bernstein due to Admitted and Acknowledged Notary Public Fraud by the Law Firm of Tescher & Spallina, P.A., Robert Spallina and Donald Tescher Acting as Alleged Personal Representatives and such other relief as the Court may find just and proper. That due to the extraordinary circumstances defined herein of a lights out situation on three minor children and the Admitted and Acknowledged Forgery and Fraud by the Personal Representatives Notary Public, Kimberly Moran (“Moran”) to the Florida Governor’s Notary Public Investigators regarding documents of the estate filed with this Court, Petitioner requests this Court not wait for a hearing to be scheduled but instead act on these now LIFE THREATENING EMERGENCIES CAUSED BY THE USE OF SUCH FORGED AND FRAUDULENT DOCUMENTS AND OTHER ALLEGED ONGOING CRIMES described herein, on its own motions to stop further crimes and order EMERGENCY RELIEF to Beneficiaries to curtail an attempted Extortion of Petitioner as described herein. It should be noted that the ADMITTED FRAUD AND FORGERY OF DOCUMENTS WAS SUBMITTED AS PART OF FRAUD ON THIS COURT, and therefore these Admitted and Acknowledged Felony crimes detailed herein have been committed directly against this Court in addition to Petitioner, Beneficiaries and Interested Parties.

Dated: Palm Beach County, FL

\_\_\_\_\_, 2013

X \_\_\_\_\_  
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To:

## **Respondents sent US Mail, Fax and Email**

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## **Interested Parties and Trustees for Beneficiaries**

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IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF

SHIRLEY BERNSTEIN,

DECEASED

CASE NO. 502011CP000653XXXXSB

PROBATE DIVISION

JUDGE DAVID E. FRENCH

ELIOT IVAN BERNSTEIN, PRO SE

**AFFIRMATION**

PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL), ROBERT L.  
SPALLINA (BOTH PERSONALLY & PROFESSIONALLY),  
DONALD R. TESCHER (BOTH PERSONALLY &  
PROFESSIONALLY), THEODORE STUART BERNSTEIN,  
AS PERSONAL REPRESENTATIVES ET AL., TRUSTEES,  
SUCCESSOR TRUSTEES AND ESTATE COUNSEL AND  
JOHN AND JANE DOES,

RESPONDENTS.

\_\_\_\_\_ /

**AFFIRMATION**

I, Eliot Ivan Bernstein, make the following affirmation under penalties of perjury:

I, Eliot Ivan Bernstein, am the Pro Se Petitioner (“Petitioner”) in the above entitled action, and respectfully move this Court to issue an order to Freeze the Estate of Shirley Bernstein (“Shirley”) due to Admitted and Acknowledged FORGERY AND NOTARY PUBLIC FRAUD

AND FRAUD ON THIS COURT committed in this case by the Law Firm of Tescher & Spallina, P.A., (“TSPA”), Robert Spallina (“Spallina”) and Donald Tescher (“Tescher”) Acting as the Alleged Personal Representatives, acting further as the Employer to Legal Assistant and Notary Public, Kimberly Moran (“Moran”) and in collusion with Ted Bernstein acting under alleged roles as both Personal Representative and Successor Trustee, and such other relief as the Court may find just and proper.

The reasons why I am entitled to the relief I seek are the following based on information and belief:

#### INTRODUCTION

1. That on May 6, 2013 Petitioner filed Docket #34 an **“EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE”** (“Petition 1”).
  - i. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
  - ii. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
2. That on May 29, 2013, Petitioner filed Docket #37 **“RENEWED EMERGENCY PETITION”** (“Petition 2”)

- i. [www.iviewit.tv/20130529RenewedEmergencyPetitionShirley.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionShirley.pdf)
3. That on June 26, 2013, Docket #39 Petitioner filed a **“MOTION TO: CONSIDER IN ORDINARY COURSE THE EMERGENCY PETITION TO FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE FILED BY PETITIONER”** (“Petition 3”)
  - i. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseShirley.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseShirley.pdf)
4. That on July 15, 2013, Petitioner filed Docket #40 **“MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS”** (“Petition 4”)
  - i. [www.iviewit.tv/20130714MotionRespondPetitionShirley.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionShirley.pdf)
5. That on July 24, 2013, Petitioner filed Docket #41 **“MOTION TO REMOVE PERSONAL REPRESENTATIVES” for insurance fraud and more.** (“Petition 5”)
  - i. [www.iviewit.tv/20130724ShirleyMotionRemovePR.pdf](http://www.iviewit.tv/20130724ShirleyMotionRemovePR.pdf)
6. That on August 28, 2013, Petitioner filed Docket #TBD **“NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS”** (“Petition 6”)

**ADMITTED AND ACKNOWLEDGED FORGERY AND FRAUDULENT  
DOCUMENTS SUBMITTED TO THIS COURT IN THE ESTATE**

7. That in the aforesaid Petitions, Petitioner prayed to this Court already to Freeze the Estates of both Simon Bernstein (“Simon”) and Shirley in separate Court actions, on various grounds of alleged criminal activity claimed in the Petitions 1-6. Petitioner requests this Court to consider the all of the reasons stated in those Petitions as part of this motion and now reconsider them in light of the newly ADMITTED AND ACKNOWLEDGED crimes of FORGERY, FRAUD, FRAUD ON THE COURT, FRAUD ON THE BENEFICIARIES AND INTERESTED PARTIES.
  
8. That Kimberly Moran (“Moran”), Legal Assistant and Notary Public working for the Law Firm of Tescher & Spallina P.A. (“TSPA”), Robert Spallina (“Spallina”) & Donald Tescher (“Tescher”) has in a sworn statement on August 08, 2013 in response to complaints filed by Petitioner has Admitted and Acknowledged to the Florida Governor Notary Public investigator that she Criminally Forged and Fraudulently Notarized documents in the estate, while in the employ and supervision of TSPA, Spallina and Tescher and they then submitted these FORGED AND FRAUDULENT documents to this Court, the Beneficiaries and Interested Parties via US Interstate Mail and Email implicating further Mail and Wire Fraud and more on six separate documents titled “WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE” (“Waivers”) rendering these documents used to close the estate and start selling estates off now NULL & VOID, other than as evidence of Forgery and Fraud and all of the alleged



Criminal Acts the documents were used for subsequently, as alleged in Petitions 1-6 and further defined herein.

9. That Petitioner herewith produces the Notarized response made UNDER PENALTY OF PERJURY containing Moran's Admissions and Acknowledgements of Felony Criminal Acts on behalf of her employer TSPA as submitted to the Florida Governor's Office investigator, as Exhibit 1.
10. That Exhibit 2 is Petitioner's Response to Moran's Response submitted to the Florida Governor's office and further evidencing now alleged Perjury in Moran's initial confession and further showing new documents in now the estates of both Simon and Shirley, exhibiting further Fraud in documents including, Wills and Trusts submitted to this Court, the Beneficiaries and Interested Parties now in both the estates of Simon and Shirley.
11. That from Exhibit 2 one can see that opposite Moran's sworn statement made under penalty of perjury that TSPA directed Moran in fact on a number of newly discovered document frauds further improperly Notarized, apparently PREMEDITATED to work with other the six Waiver's she admitted to Forging and Fraudulently submitting, all working together in efforts to make near death bed changes in the estates of Simon and Shirley and to change the Beneficiaries to long established estate plans, then illegally gain Fiduciary responsibilities over the estates through the use of these documents, all in efforts to further the alleged Felony Crimes of Insurance Fraud, Theft and more, as fully described and evidenced in Petition's 1-6.
12. That Exhibit 3 is Petitioner's Original Complaint to the Florida Governor's Office.
13. That Exhibit 4 is a Cease and Desist Letter by Petitioner to TSPA, Spallina, Tescher, Ted and Moran, regarding their ceasing any actions, including any further sale or distribution of assets

in the estates of Simon and Shirley while acting as alleged Personal Representatives and Successor Trustee, until investigations of their actions can be fully completed by state and federal authorities and until this Court determines the effects to the estates caused by these admitted Forged and Fraudulent Documents submitted by TSPA, Tescher, Spallina and Moran and the effects of the newly discovered Fraudulent documents including Wills and Trusts and determine whom the ultimate Beneficiaries will now be, who is responsible for the legal fees, forensic accounting and document analysis fees and other related fees caused directly by this admitted and acknowledged fraud and finally, what to do about ALL prior transactions of assets or any other transactions that have been commissioned through the use of these admittedly Forged and Fraudulent documents and the newly discovered documents evidenced in Exhibit 2.

14. That TSPA, Spallina, Tescher, and Moran have acted together in criminal conspiracy and submitted these admittedly Fraudulent & Forged and now legally void documents in the estates of both Simon and Shirley to this Court and the Beneficiaries and Interest Parties that have materially changed who the ultimate Personal Representatives and Beneficiaries of the estates will be through now Admitted and Acknowledged Criminal Acts.

15. That the documents giving Tescher & Spallina and TSB fiduciary powers in the estates of Simon and Shirley are currently under investigations with the Governor of Florida Notary Public Division and Palm Beach County Sheriff's Office and have been simultaneously been tendered to the US District Court of New York Southern District, to be included as further evidence of RICO violations against Petitioner in an ongoing RICO and Antitrust Civil Lawsuit, legally related by Federal Judge Shira A. Scheindlin to a Former NY Supreme Court Departmental Disciplinary Committee Whistleblower Lawsuit of Christine C.

Anderson, Esq., and others, involving a series of sophisticated financial crimes committed by criminals composed mainly of law firms and lawyers acting in violation of law. That recent news evidenced in US District Court filing with Scheindlin, see URL fully included by reference herein at [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) , which evidences that Joint Terrorism Task Force Funds and Resources were illegally used and Violations of the Patriot Act are alleged against Senior Ranking Members of the New York Supreme Court and Disciplinary Departments, used to target and monitor and OBSTRUCT JUSTICE against Anderson and allegedly the related cases, including but not limited, to the RICO of Petitioners<sup>1</sup>. That recent news has evidenced that Senator John L. Sampson leader of the New York Democratic Party and former Chairman of the New York Senate Judiciary Committee was threatened and then took bribes to cover up Public Office Corruption involving these matters.

**16.** That in this new investigation of the Fraudulent and Forged Notarized documents submitted to this Court by TSPA and illegally Notarized by Public Notary Moran admitting that she had committed **MULTIPLE CRIMINAL ACTS by FRAUDULENTLY NOTARIZING AND FORGING A SERIES OF DOCUMENTS** in the estate, including Notarizing key documents that altered the estate, including Forging and Notarizing a document for Simon

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<sup>1</sup> Cases legally related or seeking relation to Anderson in the Southern District NY  
(1:07-cv-09599-SAS) Anderson v The State of New York, et al. - WHISTLEBLOWER LAWSUIT  
(1:07-cv-11196-SAS) Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. LEGALLY RELATED BY JUDGE SCHEINDLIN,  
(1:07-cv-11612-SAS) Esposito v The State of New York, et al., LEGALLY RELATED BY JUDGE SCHEINDLIN,  
(1:08-cv-05455-SAS) Capogrosso v New York State Commission on Judicial Conduct, et al., LEGALLY RELATED BY JUDGE SCHEINDLIN,  
(1:08-cv-02391-SAS) McKeown v The State of New York, et al., LEGALLY RELATED BY JUDGE SCHEINDLIN,  
(08cv02852) Galison v The State of New York, et al.,  
(1:08-cv-03305-SAS) Carvel v The State of New York, et al., LEGALLY RELATED BY JUDGE SCHEINDLIN and,  
(08cv4053) Gizella Weissshaus v The State of New York, et al.  
(1:08-cv-04438-SAS) Suzanne McCormick v The State of New York, et al. LEGALLY RELATED BY JUDGE SCHEINDLIN  
(08 cv 6368) John L. Petrec-Tolino v. The State of New York

two months after he had been pronounced dead. These acts are Felony Crimes and it is very clear that the documents act together to give TSPA, Tescher, Spallina and Ted Bernstein fiduciary powers in the estates of Simon and Shirley, which were illegally obtained after the death of Simon and Shirley and many of the documents may have not even ever been executed by Simon in the first place, which warrants further investigation and discovery.

17. That the documents admittedly FORGED AND FRAUDULENTLY submitted by TSPA, Spallina, Tescher & Moran to this Court constitutes not only Fraud against the Beneficiaries and Forgery but Fraud on the Court as the documents were sent to this Court as part of official records.
18. That while Moran has pleaded with the Governor of Florida's Notary Public Investigation Division to have mercy on her soul and leniency for her acts, her "confession" is mired in further lies and perjury, as illustrated in **Exhibit 1 – Moran Response, Exhibit 2 – Petitioner Counter-Response and Exhibit 3 – Original Governor's Complaint, and**, leaving her further acting in bad faith with unclean hands.
19. That these Crimes Committed and Admitted and Acknowledged in the creation of wholly Forged and Fraudulent documents evidenced in **Exhibits 1,2 & 3** that assigned new Personal Representatives and Successor Trustees and new Beneficiaries in near death bed changes by Simon, affecting both he and Shirley's long standing estate plans, have since being filed with this Court, the Beneficiaries and Interested Parties through Admitted and Acknowledged Mail and Wire Fraud, allowed a plethora of continuing and ongoing alleged additional crimes to be committed against the Beneficiaries and Interested Parties, including but not limited to,
  - a. Fraud on this Court

- b. Fraud on Beneficiaries and Interested Parties
- c. Alleged Insurance Fraud and Fraud on the US District Court Illinois, as defined in **Petition 5**,
- d. Alleged Real Estate Fraud,
- e. Theft of Estate Assets

15. That despite Moran's Perjured false statements that her crimes were a one off event influenced by drugs and that only she partook the crimes the exact opposite is evidenced in Exhibit 3 showing her statements to be wholly false, where it becomes obvious her actions were instead part of a larger set of documents, done on a variety of different dates and in both estates, which were created in several instances with Tescher and Spallina as signors and witnesses of these other legally invalid and improperly Notarized and Witnessed documents that ever so carefully, all fit together perfectly to allow TSPA to ILLEGALLY seize control of the estates of Simon and Shirley and henceforth begin a Pattern and Practice of frauds using these illegally gained fiduciary powers, all done in bad faith, all done with unclean hands and all done with scienter. TSPA is legally responsible and liable for the actions of their Legal Assistant and Notary Public Moran under law.

16. That Moran is also found working on several other sets of documents as Witness to another Notary Public employee of TSPA, a one Lindsay Baxley, where Petitioner has requested further investigations into her involvement in these other documents in the estates created in collusion with Baxley and Spallina and Tescher and evidenced as Exhibits in Petitioner's **Response Exhibit 2**.

17. That Petitioner has petitioned this Court repeatedly to act on its own motion to remove the Personal Representatives for a multitude of Fiduciary violations and alleged criminal acts

occurring, including those involving previously alleged and now Admitted and Acknowledged, Forgery and Fraud in document submitted to this Court and the Beneficiaries. Again, Petitioner urges the Court to remove these Personal Representatives to prevent further crimes being committed against the Beneficiaries and Interested Parties and now other parties, based on the Admission of Fraud on this Court and the Beneficiaries.

18. That once TSPA, Spallina, Tescher and Ted knew that Moran would be writing a falsified confession to the Governor's inquiry and that Petitioner had contacted state and federal agencies with their ALLEGED AT THE TIME AND NOW ADMITTED FELONY crimes, they have begun a campaign of EXTORTION to shut down Petitioner and his family and cut them off instantly of monies funding their basic living requirement. Thus, why this Court is being petitioned herein to take immediate protective measures for Petitioner and his family, including three minor children, in efforts to have this Court preclude such extortion attempt as further defined herein, which puts three minor beneficiaries lives in instant grave danger. Actions done by those supposed to be protecting these minor children and where these actions to shut down their funding of living expenses comes only after knowing their FELONY CRIMES have been exposed and ADMITTED AND ACKNOWLEDGED and where these FORGED AND FRAUDULENT documents are now involved in allowing them to commit the other FELONY acts forward, providing ample motive for such Harassment with scienter and bad faith with unclean hands against Petitioner and his family.

19. That as evidenced in Petition 1 both Simon and Shirley were funding \$100,000.00 annual living expenses continuously for years prior to their death based on an agreement with Petitioner due to special circumstances and needs of Petitioner's family as described already in the Petition 1 at Paragraph 390-404 Page 82-85. After the death of Simon, the Personal

Representatives assured Petitioner initially not to worry about the continuation of funds as they would be continued without interruption, as Simon and Shirley before their deaths had set this uninterrupted continuation of funds up through new trusts Spallina was working on post mortem, which according to Spallina were to be funded only weeks after Simon's death. Initially, Spallina claimed it would be a month or two until trusts for the kids would be funded for living and school expenses as they were the purported new beneficiaries and that the estate had ample cash and cash equivalents to cover the expenses until then. The beneficiaries had been changed, according to near death bed changes allegedly made by Simon and enabled through alleged Forged and Fraudulent and materially incomplete and improperly Notarized documents, see Petition Paragraphs 203-232 Pages 40-45.

20. That several months later it was discovered that the documents making these Beneficiary changes and assigning new Personal Representatives, whom also are the acting estate attorneys for Shirley, who prepared and submitted the Admitted and Acknowledged Forged and Fraudulent Documents to this Court and the Beneficiaries and Interested Parties, who also witnessed many of these documents including those that enable their new fiduciary powers were all part of a larger carefully crafted and orchestrated fraud on the Beneficiaries, Interested Parties and this Court.

**ATTEMPT TO EXTORT PETITIONER TO SIGN DOCUMENTS RELEASING  
OPPENHEIMER AS TRUSTEE OF TRUST FUNDS OR ELSE FACE IMMEDIATE  
TERMINATION OF FUNDS FOR LIVING EXPENSES FOR HIS FAMILY,  
INCLUDING THREE MINOR CHILDREN AS OF **AUGUST \_\_ 2013.****

21. That the Law Firm of TSPA, Spallina, Tescher acting as Personal Representatives and Counsel for the estate and Ted Bernstein acting in various alleged fiduciary capacities as

Personal Representative and Successor Trustee, are now acting together, again in coordinated conspiratorial efforts, to try and deprive benefits of Petitioner's children's school trust accounts that were depleted by orders from Spallina to Oppenheimer. The capacity that Spallina is acting under remains unknown as Petitioner and his former Counsel Tripp Scott, were unable to secure a full set of documents from either Oppenheimer or Spallina regarding these trusts and in fact, in one instance partial documents that were transmitted by Oppenheimer to Petitioner for one trust, were not signed at all. These school trusts apparently were established in 2006 and funded prior to Simon and Shirley's death, and now, knowing these funds were paying Petitioner's family bills, as Spallina himself ordered this use of the funds to occur after Simon's death, as further defined in the Motion for Family Allowance filed with this Court, Petition 6. Spallina, knowing of Moran's confession and his own liability in the matters and those of his law firm TSPA and partner Tescher, has now contacted the Trustee, Craig of Oppenheimer regarding these school trusts and now Oppenheimer has written a letter attempting to resign as Trustee and unraveling the Trusts and further releasing them from fiduciary duties and liabilities, in an Extortion styled attempt to force Petitioner to release Oppenheimer as Trustee, dismantle the trust and transfer the remaining funds to Petitioner's brother, who is alleged to be part of the criminal acts defined in Petitions 1-6, all on Spallina's advise acting in an unknown capacity. If Petitioner does not accept the release terms, terminate the trust instantly and transfer of the funds to his brother instantly the payment of the children's living expenses and school expenses will be terminated leaving Petitioner's children and family without electricity paid, groceries paid, school paid, insurance paid or any other life sustaining funds for bills paid starting on the date of her letter. This termination is not for lack of funds in the accounts to continue the



trusts, as there are enough funds to sustain the family needs for another 4-5 months until matters in the estates can be sorted out but instead the termination is a way to shut down the lives of Petitioner and his family and further attempt to EXTORT him in attempts to silence him in the Courts and Prosecutorial Offices by creating forced hardships virtually overnight in an either sign the documents as is, transfer the monies to others or else no life sustaining funding from this point forward. Craig, at Oppenheimer in prior correspondences evidenced in Petition 6 even stated that she is fully aware that these funds are paying life sustaining payments to the beneficiaries on orders from Spallina. Further, knowing of the Personal Representatives Admission and Acknowledgement of using FELONY FORGED AND FRAUDULENT in documents in the estate, the Personal Representatives know that if they can shut down the payments of Petitioner's utilities such as phone, Internet, Water, etc. at this time that this will hamper Petitioner's ability to provide information to the Court, the US District Court, the Palm Beach County Sheriff, the Governor's Notary Public Investigators and others, in attempt to further cover up the other more serious crimes of the Financial Crimes these Forged and Fraudulent Documents enabled. This represents intentional interference in ongoing investigations and court cases both state and federally and further evidences a lack of bad faith and unclean hands.

22. That Spallina sent an email through Janet Craig, who is the Vice president of Oppenheimer Trust stating through her email dated August 28, 2013, that "the trusts for Daniel, Jacob and Joshua have depleted over time due to the payment of your household bills. I have spoken with Mr. Spallina and he has informed me that the household bill payments will not be refunded to the trusts. We have therefore decided to terminate the trusts due to their de minimus market values." The said email is produced at Exhibit 5. Exhibit 6 is a prior

communication from Craig regarding the accounts and where the Court should note how the assets were to be distributed to Petitioner in the original letter and after being directed by Spallina, Oppenheimer intends to send these funds to Ted Bernstein, who has wholly been excluded from the estates by Shirley and Simon and has no interests in Bernstein Family Realty LLC. That Ted Bernstein has been reported to state and federal authorities for his alleged acts in criminal conspiracy with the Personal Representatives.

23. That this virtual overnight attempt to shut down Petitioner also will cease the ability to retain legal counsel, as legal fees were also being paid through these trusts to protect the children's rights. This threat to Petitioner's children by their Trustee Oppenheimer as evidenced herein, Exhibit \_\_\_ on the advice of Spallina, may now include Oppenheimer in violation of their Fiduciary Duties and law in the handling of these trust funds.

24. Hence it is eminent and emergent to Freeze the Estate of Simon and Shirley to stop the misuse of the Trust by Respondents on the basis of illegal documents as acknowledged by Notary.

#### **REMOVAL OF PERSONAL REPRESENTATIVE:**

A. Relevant law

733.504 **Removal of personal representative; causes for removal.**—A personal representative may be removed and the letters revoked for any of the following causes, and the removal shall be in addition to any penalties prescribed by law:

- (1) Adjudication that the personal representative is incapacitated.
- (2) Physical or mental incapacity rendering the personal representative incapable of the discharge of his or her duties.

- (3) **Failure to comply with any order of the court, unless the order has been superseded on appeal.**
- (4) **Failure to account for the sale of property or to produce and exhibit the assets of the Estates when so required.**
- (5) **Wasting or maladministration of the Estates.**
- (6) Failure to give bond or security for any purpose.
- (7) Conviction of a felony.
- (8) Insolvency of, or the appointment of a receiver or liquidator for, any corporate personal representative.
- (9) **Holding or acquiring conflicting or adverse interests against the Estates that will or may interfere with the administration of the Estates as a whole. This cause of removal shall not apply to the surviving spouse because of the exercise of the right to the elective share, family allowance, or exemptions, as provided elsewhere in this code.**
- (10) Revocation of the probate of the decedent's will that authorized or designated the appointment of the personal representative.
- (11) Removal of domicile from Florida, if domicile was a requirement of initial appointment.
- (12) **The personal representative would not now be entitled to appointment.**

Fla. Stat. ch. 733.504 authorizes the removal of a personal representative and trustee of an estate **if sufficient grounds for removal are shown**. *In re Estate of Moe Senz*, 417 So. 2d 325, Fla. App. LEXIS 21159 (Fla. Dist. Ct. App. 1982). In the case of *In re Estate of Moe Senz*, the Florida Court of Appeals for fourth district reversed the judgment of

lower court stating that holding that there was sufficient evidence of numerous instances of mismanagement of the estate by appellees nephew and lawyer, which justified granting appellant widow and beneficiaries's petition for removal as personal representatives and trustees and the matter was remanded with directions to grant appellants' petition for removal of representative.

According to [Fla. Stat. ch. 733.504\(9\)](#), a personal representative may be removed for holding or acquiring conflicting or adverse interests against the estate which will adversely interfere with the administration of the estate as a whole. *In re Estate of Bell*, 573 So. 2d 57, 59, Fla. App. LEXIS 9651(Fla. Dist. Ct. App. 1990).

#### B. Discussion

In this case there is clear mismanagement by Personal Representatives and they are also holding conflicting/ adverse interests against the Estates and beneficiaries. Hence they should be removed. Moreover it is now clear that their acts are base on forged and fraudulent documents.

### **PERSONAL REPRESENTATIVES ARE LIABLE FOR DAMAGES AND LOSS TO PETITIONER:**

#### A. Relevant law

733.609 Improper exercise of power; breach of fiduciary duty.—

(1) A personal representative's fiduciary duty is the same as the fiduciary duty of a trustee of an express trust, and a **personal representative is liable to interested persons for damage or loss resulting from the breach of this duty**. In all actions for breach of fiduciary duty or challenging the exercise of or failure to exercise a personal

representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.

(2) When awarding taxable costs, including attorney's fees, under this section, the court in its discretion may direct payment from a party's interest, if any, in the Estates or enter a judgment which may be satisfied from other property of the party, or both.

(3) This section shall apply to all proceedings commenced hereunder after the effective date, without regard to the date of the decedent's death.

**If the exercise of power concerning the estate is improper or in bad faith, the personal representative is liable to interested persons for damage or loss resulting from a breach of his fiduciary duty to the same extent as a trustee of an express trust. In all actions challenging the proper exercise of a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.** [Fla. Stat. ch. 733.609](#)(1993). *Landon v. Isler*, 681 So. 2d 755, \*756, Fla. App. LEXIS 9138

(Fla. Dist. Ct. App. 1996)

**If the personal representative breaches his fiduciary duty, he may be liable to the interested persons for damage or loss resulting from that**

**breach.** *McDonald v. Mauriello (In re Estate of Wejanowski)*, 920 So. 2d 190, \*191, Fla. App. LEXIS 1804 (Fla. Dist. Ct. App. 2006).

Under Florida law, an estate's personal representative has the same fiduciary duty as a trustee of an express trust. See [Fla. Stat. § 733.609\(1\)](#). That standard is one of reasonable care and caution. See [Fla. Stat. § 518.11\(1\)\(a\)](#) (referenced by [Fla. Stat. § 737.302](#)); see also [State v. Lahurd](#), 632 So. 2d 1101, 1104 (Fla. Dist. Ct. App. 1994); [Estate of Rosenthal](#), 189 So. 2d 507, 508 (Fla. Dist. Ct. App. 1966).

#### B. Discussion

In this case the Personal Representatives have breached their fiduciary duty by exercising their power concerning the Estates in an improper manner and in bad faith with unclean hands. Hence, they are liable to the Beneficiaries and Interested Parties for damages and loss resulting from a Breach of their Fiduciary Duties and the Court has to award taxable costs including attorney's fees and other costs and any cost this Court deems just and reasonable.

Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE:  
ADMINISTRATION OF ESTATES 733.504 regarding removal of personal representative for cause and where the Court must determine if the Personal Representatives should be removed and the letters revoked for any of the following causes and those already evidenced and alleged herein, and the removal shall be in addition to any penalties prescribed by law.

Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE:  
ADMINISTRATION OF ESTATES that this Court under 733.508 demand an accounting and discharge of removed personal representatives whereupon removal,

- i. a removed personal representative shall file and serve a final accounting of that personal representative's administration,
- ii. after determination and satisfaction of the liability, if any, of the removed personal representative and upon receipt of evidence that the Estates assets have been delivered to the successor fiduciary, the removed personal representative shall be discharged.

Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE:

ADMINISTRATION OF ESTATES 733.509 Surrender of assets upon removal that this Court upon entry of an order removing a personal representative, the removed personal representative shall immediately deliver all Estates assets, records, documents, papers, and other property of or concerning the Estates in the removed personal representative's possession or control to the remaining personal representative or successor fiduciary or this Court.

Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE:

ADMINISTRATION OF ESTATES 733.609 Improper exercise of power; breach of fiduciary duty, the Court will note that,

- i. a personal representative's fiduciary duty is the same as the fiduciary duty of a trustee of an express trust, and a personal representative is liable to interested persons for damage or loss resulting from the breach of this duty. In all actions for breach of fiduciary duty or challenging the exercise of or failure to exercise a personal representative's powers, the court shall award taxable costs as in chancery actions, including attorney's fees.

- ii. When awarding taxable costs, including attorney's fees, under this section, the court in its discretion may direct payment from a party's interest, if any, in the Estates or enter a judgment which may be satisfied from other property of the party, or both.

Under Title XLII ESTATES AND TRUSTS Chapter 733 PROBATE CODE:

ADMINISTRATION OF ESTATES 733.619 Individual liability of personal representative should be considered by the Court where,

- i. a personal representative is individually liable for obligations arising from ownership or control of the Estates or for torts committed in the course of administration of the Estates if personally at fault.
- ii. claims based on contracts, except a contract for attorney's fee, entered into by a personal representative as a fiduciary, on obligations arising from ownership or control of the Estates, or on torts committed in the course of Estates administration, may be asserted against the Estates by proceeding against the personal representative in that capacity, whether or not the personal representative is individually liable.
- iii. issues of liability as between the Estates and the personal representative individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding.

## **PRAYER FOR RELIEF**



**WHEREFORE**, for the reasons set forth in detail herein, Petitioner respectfully requests that this Court in the interest of justice issue an order to:

1. Immediately Remove Personal Representatives and Successor Trustee
2. Secure all documents retained by PR and ST, including all ORIGINAL SIGNED DOCUMENTS in the estates of Simon & Shirley Bernstein. Secure all telephone, fax, email submissions by the PR, ST and any other parties involved in the administration of the estate, including all accounting records for Simon & Shirley Bernstein from Goldstein Lewin aka CBIZ MHM, LLC. Also request all records relating to Simon & Shirley Bernstein from Proskauer Rose LLP and Foley & Lardner/Hopkins Sutter law firm in connection with estate planning and trust work done by their firms.
3. Under RULE 5.235. ISSUANCE OF LETTERS, BOND, due to the problems with the documentation in the Estates and unlawful activities alleged and evidenced herein, Petitioner requests the Court to direct the Personal Representatives and ST and Moran to issue bond or pay for all legal/accounting/investigative costs incurred by the Beneficiaries and Interested Parties due to their illegal actions, and further direct them to give bond to require additional surety great enough to cover all potential losses to the Beneficiaries.
4. Under RULE 5.310. DISQUALIFICATION OF PERSONAL REPRESENTATIVE; NOTIFICATION, since Theodore Bernstein, Donald Tescher and Robert Spallina all appear to be acting Personal Representatives who were not qualified to act at the time of appointment and whose appointments were made through fraudulent and forged documentation submitted to this Court and Petitioner as described herein.

5. Immediately Appoint New PR to be chosen by Petitioner who maintains three qualified candidates to administer the estates and assets fairly for all parties. Two are lawyers, one a leading estate planner and one a successful business entrepreneur with an accounting degree.
6. Determine all documents in the estates are Null and Void due to the admitted and acknowledged fraudulent documents submitted to the court as part of a Fraud on the Court by TSPA, Spallina, Tescher and Moran in order to determine the resulting changes to Beneficiaries and Interested Parties caused, as these documents signed near death bed attempt to change the long established beneficiaries of Simon and Shirley's estates
7. Report TSPA, Robert Spallina, Donald Tescher and Legal Assistant Kimberly Moran to The Florida Bar and any other state or federal investigators this Court deems essential for further investigation of both the admitted Fraud and other alleged crimes that are being committed through the use of such documents, including all those alleged crimes in the court filings listed herein
8. Preclude any further actions forward by the PR, ST and Moran, including termination of benefits of trust or trust itself, the sale or removal of assets from the estates and begin to review all prior actions for further evidence of fraud and reclaim any assets or distributions or property removals that occurred through the use of the Forged and Fraudulent documents by any party.
9. Demand the accounting records, tax returns, etc. of TSPA and Robert Spallina, Donald Tescher personally and professionally for the periods 2005-Present
10. Demand the accounting records, tax returns, etc. for Simon & Shirley Bernstein for the periods 1999-2012.

Respectfully submitted,

Dated: Palm Beach County, FL  
\_\_\_\_\_, 2013

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Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

## **PROOF OF SERVICE BY E-MAIL**

I, Eliot Ivan Bernstein, the Petitioner certify that on 28<sup>th</sup> day of August, 2013 I served this notice of motion by emailing a copy to:

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### **Interested Parties and Trustees for Beneficiaries**

Lisa Sue Friedstein  
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Jill Marla Iantoni  
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Pamela Beth Simon  
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Suite 2603  
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Dated: Palm Beach County, FL

\_\_\_\_\_, 2013

X \_\_\_\_\_  
Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

**Exhibit 1**

**Response By Notary**

**Exhibit 2**

**August 28, 2013 Janet Craig, Oppenheimer Letter**