

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
2 PROBATE/GUARDIANSHIP DIVISION IY  
3 CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:  
SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_/  
ELIOT IVAN BERNSTEIN, PRO SE,  
6 Petitioner,

vs.

7  
8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
11 DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE  
15 THE HONORABLE MARTIN H. COLIN  
16  
17 South County Courthouse  
200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 33344  
19  
20 Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

21  
22  
23  
24 Stenographically Reported By:  
JESSICA THIBAULT

25

♀  
00002

1 APPEARANCES  
2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

13 MR. MANCERI: But before I make my  
14 presentation, I would just like to apologize  
15 for Mr. Tescher's absence. He's out of town  
16 for the holiday.

17 THE COURT: Okay. Who are the PR's that  
18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein  
20 there is no technically any PR because we had  
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from  
24 Mr. Bernstein's 57-page filing, which falls  
25 lawfully short of any emergency, was a petition

♀

00024

1 to reopen the estate, so technically nobody has  
2 letters right now.

3 Simon Bernstein, your Honor, who died a  
4 year ago today as you heard, survived his wife,  
5 Shirley Bernstein, who died December 10, 2010.  
6 Simon Bernstein was the PR of his wife's  
7 estate.

8 As a result of his passing, and in attempt  
9 to reopen the estate we're looking to have the  
10 estate reopened. So nobody has letters right  
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's  
13 estate it was closed January of this year,  
14 there was an order of discharge, I see that.  
15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the  
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I  
23 want to be discharged, my wife's estate is  
24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it

♀

00025

1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that  
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

♀

00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

♀

00027

In Re\_ The Estate of Shirley Bernstein.txt  
1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

♀

00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of

In Re\_ The Estate of Shirley Bernstein.txt  
22 the estate.

23 THE COURT: What about the fact, counsel,  
24 let me see who signed this. Okay, they're all  
25 the same as to -- so let me ask this, I have a

♀

00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived  
4 accounting, agreed to a petition to discharge  
5 on May 15th, and you signed that. Do you  
6 remember doing that? Do you remember that or  
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing  
9 it and sending it with a disclaimer that I was  
10 signing it because my father was under duress  
11 and only to relieve this stress that he was  
12 being --

13 THE COURT: Well, I don't care -- I'm not  
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it  
16 with the expressed -- when I signed it I was  
17 coned by Mr. Spallina that he was going to send  
18 me all the documents of the estate to review.  
19 I would have never lied on this form when I  
20 signed it. It's saying that I saw and I never  
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature  
25 notarized?

♀

00030

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or  
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's  
5 been addressed with the Governor's office.

6 THE COURT: You need to address this with  
7 me.

8 MR. MANCERI: I am going to address it  
9 with you.

10 THE COURT: Here's what I don't understand  
11 because this is part of the problem here, is  
12 that Shirley has an estate that's being  
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they

In Re\_ The Estate of Shirley Bernstein.txt  
16 think it's time to close out the estate.

17 MR. MANCERI: Correct.

18 THE COURT: Waivers are sent out, that's  
19 kind of SOP, and people sign off on that.

20 MR. MANCERI: Right.

21 THE COURT: And why are they held up for  
22 six months, and when they're filed it's after  
23 Simon is already deceased?

24 MR. MANCERI: They were originally filed  
25 away, your Honor, under the signature of the

♀

00031

1 people.

2 THE COURT: No, they weren't filed, that's  
3 the whole thing. I'm looking at the file date,  
4 filed with The Court.

5 MR. MANCERI: No, they were returned by  
6 the clerk because they didn't have  
7 notarization. We have affidavits from all  
8 those people, Judge.

9 THE COURT: Well you may have that they  
10 got sent up here.

11 MR. MANCERI: We have affidavits from all  
12 of those people.

13 MR. ELIOT BERNSTEIN: Including Simon?

14 THE COURT: Slow down. You know how we  
15 know something is filed? We see a stamp.

16 MR. MANCERI: It's on the docket sheet, I  
17 understand.

18 THE COURT: So it's stamped in as filed in  
19 November. The clerk doesn't have -- now, they  
20 may have rejected it because it wasn't  
21 notarized, and that's perhaps what happened,  
22 but if in the meantime waiting cured the  
23 deficiency of the document, two things happen  
24 you're telling me, one, Simon dies.

25 MR. MANCERI: Correct.

♀

00032

1 THE COURT: And when those documents are  
2 filed with the clerk eventually in November  
3 they're filed and one of the documents says, I,  
4 Simon, in the present.

5 MR. MANCERI: Of Ms. Moran.

6 THE COURT: No, not physically present, I  
7 Simon, I would read this in November Simon  
8 saying I waive -- I ask that I not have to have  
9 an accounting and I want to discharge, that

In Re\_ The Estate of Shirley Bernstein.txt  
request is being made in November.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. MANCERI: Okay.

THE COURT: He's dead.

MR. MANCERI: I agree, your Honor.

THE COURT: Who filed that document?

MR. MANCERI: Robert, do you know who  
filed that document in your office?

MR. SPALLINA: I would assume Kimberly  
did.

MR. MANCERI: Ms. Moran.

THE COURT: Who is she?

MR. MANCERI: She's a staff person at  
Teschler and Spallina.

THE COURT: When she filed these, and one  
would think when she filed these the person who  
purports to be the requesting party is at least

♀

00033

1 alive.

2 MR. MANCERI: Understood, Judge.

3 THE COURT: Not alive. So, well -- we're  
4 going to come back to the notary problem in a  
5 second.

6 MR. MANCERI: Okay.

7 THE COURT: In the meantime, based upon  
8 all that I discharge the estate, it's closed.

9 Here's what I don't understand on your  
10 side, you're representing yourself, but the  
11 rules still apply. You then file, Eliot  
12 Bernstein, emergency petitions in this closed  
13 estate, it's closed.

14 MR. ELIOT BERNSTEIN: You reopened it.

15 THE COURT: When did I reopen it?

16 MR. MANCERI: No, it hasn't been reopened,  
17 your Honor.

18 THE COURT: There's an order that I  
19 entered in May of 2013 denying an emergency  
20 petition to freeze assets. You filed this one  
21 in May. Do you remember doing that?

22 MR. ELIOT BERNSTEIN: I believe so.

23 THE COURT: And what you said was there's  
24 an emergency in May, you want to freeze the  
25 estate assets appointing you PR, investigate

♀

00034

1 the fraud documents, and do a whole host of  
2 other things, and the estate had been closed.  
3 The reason why it was denied among other