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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.

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22
23
24 Stenographically Reported By:
JESSICA THIBAUT

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1 APPEARANCES
2
3 On Behalf of the Petitioner:
4 ELIOT IVAN BERNSTEIN, PRO SE
2753 NW 34th Street
5 Boca Raton, Florida 33434
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On Behalf of the Defendants:
LAW OFFICE OF MARK MANCERI, P.A.
2929 East Commercial Blvd., Ste. 702
Fort Lauderdale, Florida 33308
(954) 491-7099
mrmlaw@comcast.net
BY: MARK MANCERI, ESQ.

Also present:
Robert Spallina, Esq.
Theodore Bernstein
Mrs. Bernstein, Petitioner's wife

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P R O C E E D I N G S

THE COURT: All right, we're here on the Shirley Bernstein estate, 2011CP000653. Counsel, make your appearances.

MR. MANCERI: Good afternoon, your Honor, Mark Manceri. I'm here on behalf of Robert Spallina and Donald Tescher, named respondents.

MR. ELIOT BERNSTEIN: Good afternoon, your Honor, my name is Eliot Bernstein, and I'm representing myself pro se.

MR. THEODORE BERNSTEIN: Your Honor, Ted Bernstein, trustee of the estate, and I'm here representing myself today.

THE COURT: Okay, thanks.

Let me just get the case up on the computer, please.

All right, so I set oral argument based upon Mr. Bernstein's emergency motions, and I did so with the cautionary language in the notice of hearing that I assume both of you have, that indicates that I first want to hear what makes this matter emergency as defined by our law, so, because you're pro se, Mr. Bernstein, I want to make sure you're aware

No one is representing as the Personal Representative, Manceri is representing them as estate counsel, their other role. No Personal Rep because when Si died no one notified the Court and a successor PR or Trustee was never elected.

Ted is not "trustee" of the estate as their was no papers approved by court because they never closed estate while Simon was alive.

In Re_ The Estate of Shirley Bernstein.txt
of that particular aspect of what I just said.

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1 Counsel knows. This is not an emergency in
2 your mind. It's an emergency as the law calls
3 it an emergency. You're probably going to show
4 me a case or an administrative order and tell
5 me how this is an emergency.

6 The second part of it is what type of
7 evidentiary hearing we need to have, so you're
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to
10 step up or?

11 THE COURT: You could do it right from
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency
18 because three of the beneficiaries of the
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be
23 cut off of school, insurance, the necessary
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?

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1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or
7 the administrative order where that is defined
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I
10 made a mistake.

11 THE COURT: You're supposed to know that.
12 That's why we're having this hearing.

13 MR. ELIOT BERNSTEIN: Well, I'm pro se.

14 THE COURT: I know. We brought all this
15 judicial effort here. No, sir, this is not a
16 free shot for you.

17 MR. ELIOT BERNSTEIN: I thought that it
18 was an emergency.

19 THE COURT: No, it's not your thought.

20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: I cautioned you in the notice
22 of hearing you so came today -- I kind of
23 cautioned you whether this is an emergency,
24 okay? So you need to demonstrate to me where
25 under our laws this situation that you say the

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1 evidence would show is imminently happening,
2 imminent means today, okay, where an emergency
3 exists.

4 The last two emergencies I did, someone
5 was on the way to the airport waiting to be
6 taken illegally to Iran, a non-hate convention
7 country. We had to get an order out so that
8 Homeland Security would rush down with armed
9 guards and protect a child from going overseas
10 and never coming back to the U.S.

11 The other one was we had to get an order
12 so police could break down the door to prevent
13 someone from being physically killed or harmed
14 physically.

15 Those two were emergencies. Is this an
16 emergency like that?

17 MR. ELIOT BERNSTEIN: I believe so.

18 THE COURT: Okay, all right, so let me
19 tell you, I'm going to let you go forward. If
20 I do not believe so, get your checkbook out.

21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon

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1 what you've told me, but you have this belief
2 that it is. Remember, show me that it's a
3 legal emergency like I gave the example of it.
4 Someone is going to die, be taken out of the
5 jurisdiction, someone's wellbeing today is
6 going to be -- you know, they're going to be
7 without food, they'll be on the street
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. So tell me how that --
14 what evidence is there that this is an
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate
17 representatives when my parents died told us
18 that they were understanding the special
19 circumstances me and my three children are in,
20 and that funds had been set aside and not to
21 worry, there would be no delay of paying their
22 living costs and everything that my father and
23 mother had been paying for years to take care
24 of them, and then they were paying that out of
25 a bank account at Legacy Bank.

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1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had
3 directed Rachel Walker to pay the expenses of a
4 Legacy bank account. It was being paid. And
5 then Mr. Spallina stated that I should or that
6 Rachel should -- she was fired, she should now
7 turn the accounts over to my wife to start
8 writing checks out of an account we've never
9 seen.

10 So I said I didn't feel comfortable
11 writing checks out of an account, especially
12 where it appeared my dad was the signer, so I
13 called Legacy Bank with Rachel and they were
14 completely blown away that checks had been
15 being written out of a dead person's account.
16 Nobody had notified them that Simon had
17 deceased. And that no -- by under no means
18 shall I write checks out of that account, and
19 so then Mr. Spallina told me to turn the
20 accounts over to Janet Craig of Oppenheimer,
21 and Oppenheimer was going to pay the bills as
22 it had been done by Rachel in the past. And so
23 we sent her the Legacy account. We thought all
24 that was how things were being done and, you
25 know, he doesn't give us any documents

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1 whatsoever in the estate, so we don't know, you
2 know, what he's operating out of, but
3 Oppenheimer then started to pay the things --
4 first they said, wait a minute, these are
5 school trust funds -- well, they actually said
6 that after they started paying, and they were a

7 little hesitant that these funds were being
8 used for personal living expenses of everybody,
9 which the other Legacy account had been paying
10 for through an agreement between and my
11 parents. And then what happened was
12 Mr. Spallina directed them to continue, stating
13 he would replenish and replace the funds if he
14 didn't get these other trusts he was in the
15 process of creating for my children in place
16 and use that money he would replenish and
17 replace it.

18 So the other week or two weeks or a few
19 week ago Janet Craig said that funds are
20 running low and she contacted Mr. Spallina who
21 told her that he's not putting any money into
22 those trusts and that there's nothing there for
23 me, and that basically when that money runs out
24 the kids' insurance, school, their home
25 electricity and everything else I would

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1 consider an emergency for three minor children
2 will be cut off, and that was not --

3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say
6 things were as they should be, your parents
7 were alive and they were paying bills of you
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is
20 deceased today a year ago.

21 THE COURT: All right. So you're saying
22 that after your father died, however it
23 happened, bills for you and your children
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

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1 account that they shouldn't have been being
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,
17 electricity, water, food, clothing, everything,
18 100-percent.

19 THE COURT: When did the emergency take
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.
22 They told me if I didn't sign releases that
23 Robert wanted me to sign and turn the money
24 over to my brother, the remaining corpus of the
25 trust, that they were going to shut the funds

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1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent
4 sure, because then I asked them for their
5 operating documents that Mr. Spallina had sent
6 them, and once again we've got un-notarized
7 documents --

8 THE COURT: We'll talk about the notary
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have
11 new improperly notarized documents authorizing
12 the trust to operate, and they sent me
13 incomplete documents which are unsigned on
14 every page of the trust agreement, so they're
15 telling me and I've asked them three times if
16 they have signed copies and three times they've
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as
21 overdo today?

22 MR. ELIOT BERNSTEIN: Health insurance is
23 one.
24 THE COURT: What's overdue today?
25 MR. ELIOT BERNSTEIN: Health insurance is

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1 one.
2 THE COURT: All right, name the health
3 insurance company.
4 MR. ELIOT BERNSTEIN: It's COBRA.
5 THE COURT: COBRA is not a company.
6 MR. ELIOT BERNSTEIN: Blue Cross.
7 THE COURT: Blue Cross, okay. How much is
8 overdue to Blue Cross today?
9 MR. ELIOT BERNSTEIN: \$2,000 or so.
10 THE COURT: It's not \$2,000 a day.
11 MR. ELIOT BERNSTEIN: A month.
12 THE COURT: \$2,000 a month is the health
13 insurance bill?
14 MR. ELIOT BERNSTEIN: Correct.
15 THE COURT: When was that bill due?
16 MR. ELIOT BERNSTEIN: Well, this is the
17 problem. All of the bills are going to them
18 and they don't share with me any of that.
19 THE COURT: So how do you know that you
20 don't have health insurance coverage?
21 MR. ELIOT BERNSTEIN: Only because it's
22 paid by them on that date. Usually on the
23 first.
24 THE COURT: September 1st?
25 MR. ELIOT BERNSTEIN: Yes. As of

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1 September 1st I don't believe they have --
2 THE COURT: Is the coverage in effect
3 today?
4 MR. ELIOT BERNSTEIN: I don't know.
5 THE COURT: If you don't know, how do you
6 know that it's an emergency?
7 MR. ELIOT BERNSTEIN: I just know they
8 haven't paid it.
9 THE COURT: Okay, so --
10 MR. ELIOT BERNSTEIN: I don't have --
11 THE COURT: So you have coverage you said
12 as of August 31st you had coverage?
13 MR. ELIOT BERNSTEIN: We don't know. We
14 don't have an accounting if she stated that,
15 I'm sorry.

16 THE COURT: Okay, so you may be covered,
17 you may not be covered?

18 MR. ELIOT BERNSTEIN: Correct.

19 THE COURT: What other bill is unpaid as
20 of today.

21 MR. ELIOT BERNSTEIN: And that's my wife
22 and my children too.

23 THE COURT: Okay.

24 MR. ELIOT BERNSTEIN: Again, they have all
25 the bills, so when they're due, like the

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1 electric was due on the 28th, then they usually
2 pay it. I don't even get the bills. So the
3 bills are going straight to Oppenheimer.

4 THE COURT: How do you know
5 authoritatively that they're not being paid?

6 Ma'am, you can't speak. You're not a
7 lawyer, right?

8 MRS. BERNSTEIN: No.

9 THE COURT: Up, move to the back.

10 MR. ELIOT BERNSTEIN: You want her to go
11 back?

12 THE COURT: Yes, because she's disruptive.
13 I can't speak to you and hear her.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: So stay there in absolute
16 silence. You could write something if you
17 want, is that agreed?

18 MRS. BERNSTEIN: Yes.

19 THE COURT: Okay, go ahead. How do you
20 know these monthly bills are not being paid?
21 How do you know the way you know today is
22 Friday, you know what your name is, know
23 meaning indisputable knowledge.

24 MR. ELIOT BERNSTEIN: I can't say for
25 certainty since I don't receive it and manage

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1 and pay the bills.

2 THE COURT: Well then how is it an
3 emergency if you don't know?

4 MR. ELIOT BERNSTEIN: Well, because we
5 know that within this next month if electricity
6 isn't paid and there's no money to pay it and
7 he doesn't reimburse the trusts that all those
8 bills on whatever date they were due were
9 lapsing in the next few hours.

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THE COURT: From today?
MR. ELIOT BERNSTEIN: From the 28th.
THE COURT: The 28th of August?
MR. ELIOT BERNSTEIN: Correct, sir.
THE COURT: All right. So you don't know
if they've been paid or not. You still have
your electric on?
MR. ELIOT BERNSTEIN: Yes.
THE COURT: Are any services shut off?
MR. ELIOT BERNSTEIN: No.
MR. ROTHMAN: Maybe like things like lawn
and stuff, the lawn guys have been coming, said
we owe them money, which we've never heard that
from this guy knocking on the door.
THE COURT: All right. Is the lawn an
emergency situation?

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MR. ELIOT BERNSTEIN: No. You just asked
if any bills --
THE COURT: These are not emergencies
then.
MR. ELIOT BERNSTEIN: Okay.
THE COURT: Remember, you filed a motion
that stopped the courthouse from working.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: We thought you were ready to
die on the day you filed the motion.
MR. ELIOT BERNSTEIN: I'm very sorry.
THE COURT: Okay.
MR. ELIOT BERNSTEIN: I believed it was an
emergency. The minor children are in there.
THE COURT: Let me ask, how old are you?
MR. ELIOT BERNSTEIN: I'm 50.
THE COURT: Can you pay an electric bill?
MR. ELIOT BERNSTEIN: No.
THE COURT: Why not?
MR. ELIOT BERNSTEIN: I don't have any
employment.
THE COURT: Why not? If there's an
emergency and you're not eating and you have
children --
MR. ELIOT BERNSTEIN: It's very

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complicated, but --
THE COURT: Well, could you work to pay
your electric bill? If that made a difference?

4 MR. ELIOT BERNSTEIN: No, I haven't been
5 able to gain employment due to
6 Ricco-related-type crimes that have been
7 committed against me and my family.

8 THE COURT: So your kids are without food,
9 you would have them starve rather than go over
10 to Burger King or Dunkin Donuts and get a job
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why
19 my father and mother had set aside these funds
20 to pay those bills because they understood the
21 gravity --

22 THE COURT: So here's what we'll do, we're
23 going to have a hearing, tell me if you're
24 comfortable, whether there's any employment you
25 could get, so I'm going to bring the people

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1 from Florida State Employment who tell me
2 there's hundreds of jobs today that you could
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a
6 laborer right outside this courthouse. Why
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed
11 your children. They're going to pay you money
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.
14 I have tax liens which are under investigation
15 by the inspector general of the tax
16 administration department, currently ongoing,
17 that were put on me as part of the efforts in a
18 Ricco-related lawsuit that I'm involved in.
19 These are just the facts, I'm just telling
20 you --

21 THE COURT: What's to stop you from
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then
24 attach my wages --

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1 you're working, and you have an emergency, you
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm
4 working.

5 THE COURT: How do they know you're
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if
8 you read the last articles I put in the
9 petition six or five, one of those two, I put
10 in the articles that have been released in the
11 press that say that they were misusing joint
12 terrorism task force funds and resources to
13 monitor and violate our rights through the
14 Patriot Act violations, and that they have done
15 that to me in the related cases in the federal
16 court.

17 THE COURT: All right, whatever you say.
18 I don't think you want -- if you want a hearing
19 on whether you could go to work today,
20 physically go to work and pay, I'll give you
21 that hearing right now and I'll get someone
22 from Florida Employment. Here's the deal, you
23 lose all your motions as soon as they tell you
24 that you could go outside and work.

25 Do you want that hearing or not? You

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1 could physically earn enough money to pay for
2 food for your children today, you tell me you
3 can't do -- that someone is going to tackle you
4 and stop you from working outside as a laborer
5 to get enough money to feed your children?
6 That's the emergency, your children are
7 starving. You're a parent. You're going to
8 tell me you're going to let your children
9 starve and not work to earn enough money to
10 feed them, that's what you're telling me,
11 correct?

12 MR. ELIOT BERNSTEIN: No. Well, I won't
13 tell you that because, I guess, if you say
14 there's some job that you could get me I'll get
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied
18 for so many over the years --

19 THE COURT: I mean maybe not as a CEO of a
20 company. \$10, \$9.00 an hour jobs --

21 MR. ELIOT BERNSTEIN: I've applied for
22 minimum wage and had trouble, believe me.

23 THE COURT: I'm talking about getting work
24 today -- if you tell me you can't work today
25 I'll have a hearing on that.

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1 MR. ELIOT BERNSTEIN: I can work today.

2 THE COURT: Well, then you could feed your
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get
5 a job --

6 THE COURT: That's not an emergency. You
7 might have a hearing on it down the line, but
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are
11 starving, they haven't eaten, there's no food,
12 and I can't legally get them food because I
13 can't work. I have people who are blind, who
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't
20 want to work, think they're reasons not to work
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on
24 the emergency before we go to some of these
25 others issues which concern me about what he

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1 said.

2 MR. MANCERI: Good afternoon, your Honor.
3 As I stated in my opening, I represent Robert
4 Spallina and Mr. Tescher. I would like to
5 apologize --

6 THE COURT: So their roles are what in
7 this case?

8 MR. MANCERI: They were counsel or are
9 counsel for the estate of Shirley Bernstein, as
10 well as counsel for the estate of Simon
11 Bernstein, who is in front of Judge French.

12 THE COURT: Okay.

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

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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

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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

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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

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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

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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?

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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.

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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

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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

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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

4 things, one, it may not have been an emergency,
5 but, two, the case was not reopened. There's
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to
8 someone.

9 THE COURT: You may have paid to file what
10 you filed, but there's no order reopening the
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my
13 mistake.

14 THE COURT: It's closed, the PR is
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to
17 reopen because we discovered the fraudulent
18 documents.

19 THE COURT: But then you still had to ask
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your
22 Honor, that they haven't come to you in all of
23 that time, he said he just got notified from
24 the governor the other day about this fraud, I
25 put it in your court and served him months ago

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00035

1 and he never came to me or you or anybody else
2 to know that the police are calling him, the
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another
5 emergency similarly, served you folks, Tescher
6 and Spallina. I denied it because it wasn't an
7 emergency because nothing was happening I
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I
10 understand emergency --

11 THE COURT: The estate wasn't open and it
12 really wasn't an emergency at the time. And
13 then you filed a motion in the ordinary course
14 to have things heard, and a motion to -- bunch
15 of other motions, to remove PR.

16 MR. ELIOT BERNSTEIN: Well, with each
17 successive crime we found -- by the way, that's
18 kind of why this is an emergency because with
19 the use of these fraudulent documents a bunch
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your
24 Honor, but Mr. Spallina abused her so much and

In Re_ The Estate of Shirley Bernstein.txt
she ran up a \$10,000 bill.

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00036

1 THE COURT: Doesn't help me.

2 MR. ELIOT BERNSTEIN: Doesn't help you,
3 okay.

4 THE COURT: Then in August you started
5 again, September you started again, and at
6 least I set the hearing because it's kind of
7 hard when I read your allegations I couldn't
8 figure it out. Now I think, okay -- so now let
9 me ask you this, counsel.

10 MR. MANCERI: Yes, sir.

11 THE COURT: So the pleadings get filed,
12 the estate gets closed.

13 MR. MANCERI: Correct.

14 THE COURT: Simon dies. So what happened
15 with Shirley's estate?

16 MR. MANCERI: Shirley's estate is closed,
17 as you said.

18 THE COURT: I know the administration is
19 closed. What happened with her estate? Where
20 did that go? Did she have a will?

21 MR. MANCERI: Her assets went into trusts,
22 and her husband had a power of appointment
23 which he exercised in favor of Mr. Bernstein's
24 children.

25 THE COURT: Okay.

♀

00037

1 MR. MANCERI: And that leads to the trust
2 that he mentioned at Oppenheimer which he
3 misled The Court as to what's happening with
4 that.

5 THE COURT: Let me slow you down.

6 MR. MANCERI: Okay.

7 THE COURT: So her estate assets went into
8 a trust?

9 MR. MANCERI: Correct.

10 THE COURT: And that trust is --

11 MR. MANCERI: And Ted Bernstein, I
12 believe, is the trustee of that trust.

13 THE COURT: And you're brothers?

14 MR. THEODORE BERNSTEIN: That's correct.

15 THE COURT: All right. So then -- so
16 Simon really wasn't alive long when he died as
17 trustee?

18 MR. MANCERI: Not terribly long.

19 THE COURT: All right. So he was a
20 trustee. Was she a trustee as well?

21 MR. MANCERI: He died, your Honor. Again
22 she died December 10, 2010. He died September
23 of 2012.

24 THE COURT: Right, but was he a trustee
25 also of Shirley's trust?

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00038

1 MR. MANCERI: Yes.

2 THE COURT: So she dies, the estate is
3 closed, her assets are in a trust. Simon then
4 dies. What happened with his estate? Judge
5 French is hearing it, but tell me what
6 happened.

7 MR. MANCERI: My understanding is that
8 money went into a trust for the grandchildren.

9 THE COURT: Grandchildren of Eliot?

10 MR. MANCERI: Well there's actually ten of
11 them, ten grandchildren, which he has three.

12 THE COURT: So the beneficiary level for
13 Simon was he skipped over his children and gave
14 everything to the grandchildren?

15 MR. MANCERI: That's correct.

16 MR. ELIOT BERNSTEIN: No.

17 THE COURT: That's not what happened with
18 your father's estate?

19 MR. ELIOT BERNSTEIN: No.

20 THE COURT: That's not what the rule says
21 to do?

22 MR. ELIOT BERNSTEIN: No.

23 THE COURT: What does the rule say to do?

24 MR. ELIOT BERNSTEIN: The rule is not
25 properly notarized. He didn't appear --

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00039

1 THE COURT: What did the will say that The
2 Court used?

3 MR. ELIOT BERNSTEIN: The Court filed a
4 will and amended trust, both improperly
5 notarized.

6 THE COURT: You didn't answer my question,
7 so stop speaking.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: If you don't answer me you
10 give up your right to participate. Stop, don't
11 speak, all right, because you waived your right
12 because you refused to answer my question,

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okay. So I'll let you answer it.
MR. MANCERI: If I can, your Honor.
THE COURT: Go ahead.
MR. MANCERI: The ten grandchildren shares
-- and I want to be clear on this, this
gentleman is only a tangible personal property
beneficiary. He and his own proper person.
And the mother. That's all he's entitled to.
No cash request, nothing directly to him,
because of his financial problems among other
issues.
THE COURT: Okay.
MR. MANCERI: He has been asked to

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establish accounts for the benefit of his
children and he refused to do it.
THE COURT: I'm not interested in that,
here's what I'm interested in.
MR. MANCERI: All right.
THE COURT: So before this latest realm of
pleadings were filed, both parents are
deceased?
MR. MANCERI: Yes.
THE COURT: They both have trusts?
MR. MANCERI: Right.
THE COURT: Simon's trusts are for the
benefit of the grandchildren?
MR. MANCERI: Correct.
THE COURT: And Shirley's trust is for the
benefit of who?
MR. MANCERI: The grandchildren now
because Simon died.
THE COURT: So children-level, Eliot, Ted
were skipped over as beneficiaries?
MR. MANCERI: That's correct, your Honor.
THE COURT: Now, tell me the best you can
the way Eliot described that there was some
deal that had been in effect with Shirley and
Simon while they were alive that kept on going

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after Shirley died to help support his
children.
MR. MANCERI: That I can't comment on
personally, your Honor, because I never met
either one of them.
THE COURT: Do you know anything about

7 that?

8 MR. MANCERI: He was the draftsman. His
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they
19 were alive they were helping to support Eliot's
20 family?

21 MR. SPALLINA: To the best of my
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si

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00042

1 was paying bills.

2 THE COURT: And when he died in September
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that
5 we set up in the name of Bernstein Family
6 Reality. That was owned by three old trusts
7 not that we created, but were created by
8 Mr. Bernstein in 2006 that owned the house that
9 the family lives in, so there was an LLC that
10 was set up, Bernstein Family Realty, LLC,
11 there's the three children's trust that own the
12 membership interest in that, and there was a
13 bank account at Legacy Bank that had a small
14 amount of money that Si's assistant Rachel had
15 been paying the bills out of on behalf of the
16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as
18 trustee of the three trusts and in control of
19 the operations of that entity, assigned
20 themselves as manager, had the account moved
21 from Legacy to Oppenheimer, and continued to
22 pay the bills they could with the small amount
23 of money that was in the Legacy account.

24 At this time, the Legacy account was
25 terminated because there were no funds left,

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00043

1 they started using the funds inside the three
2 trusts at Oppenheimer to pay for health,
3 education, maintenance and support --

4 THE COURT: Of the grandchildren?

5 MR. SPALLINA: Of the grandchildren. And
6 it was probably at the time that Mr. Bernstein
7 died about \$80,000 in each of those trusts last
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the
11 last year -- the kids go to private school,
12 that's an expensive bill that they pay, think
13 it's approximately \$65,000. There were other
14 expenses throughout the year. The trust assets
15 as of this week I spoke to Janet Craig, have
16 depleted down collectively across the three
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of
23 the estate right now, so let's leave the estate
24 of Shirley and Si completely separate. Just
25 trying to get to the issue that Mr. Bernstein

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00044

1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called
4 me and said that the trusts are coming to the
5 end of their useful life, it doesn't pay to
6 administer them anymore. They're going to make
7 final distribution to Mr. Bernstein and his
8 wife as the guardians of their children.

9 They sent out standard waivers and
10 releases for him to sign in exchange for the
11 remaining money that was there. There was a
12 disagreement that ensued and I have the e-mail
13 correspondence between Eliot and Janet Craig at
14 Oppenheimer that this is extortion and that
15 Mr. Spallina and you have devised a plan not to
16 give us the rest of the money. That's not the
17 case at all. In fact, we told them to
18 distribute the rest of the money, there's been
19 \$12,000 in bills submitted to them that they
20 are either paying today or on Monday, and the
21 \$14,000 or some-odd dollars that would be left

22 are in securities that they have to liquidate,
23 supposedly they would have good funds today,
24 but there was some threats of litigation and so
25 they said that it might be prudent to hold onto

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00045

1 this. There's also some expenses outstanding
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's
4 the other part of the estate planning that
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say
7 that at the death of the second of us to die,
8 pursuant to Si's exercise over his wife's
9 assets, that all of those assets would go down
10 to ten grandchildren's trust created under
11 their dockets.

12 Mr. Bernstein was on a call while his
13 father was alive with his other four siblings
14 where he had called me and said, Robert, I
15 think we need to do a phone call with my
16 children to explain to them that I'm going to
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,
21 there's a trust that deals with that, or more
22 than one trust.

23 MR. SPALLINA: There's both Si's estates
24 and Shirley's estates basically say after and
25 again there is some litigation.

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1 THE COURT: And that's different than this
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three
4 trusts that were just designed to hold.

5 THE COURT: Who's administering those
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein
8 is the trustee of his mother's trust and holds
9 three assets.

10 THE COURT: Who is the trustee of the
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

In Re_ The Estate of Shirley Bernstein.txt
16 was a claim filed by a former employee of
17 Mr. Bernstein for \$2.5 million-plus, so there's
18 litigation that's been pending in the estate
19 now for basically since this date, and those
20 funds are just sitting in a partnership account
21 at JP Morgan with no distributions that have
22 been made at all.
23 THE COURT: So what's the total corpus of
24 the what I'll call the ten grandchildren's
25 trust of both grandparents?

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1 MR. SPALLINA: Not taking into account the
2 litigation?

3 THE COURT: Well, no, you haven't paid
4 anything out yet.

5 MR. SPALLINA: I would say it's
6 approximately \$4 million.

7 THE COURT: So there's litigation going on
8 in Simon's --

9 MR. SPALLINA: Estate.

10 THE COURT: And at some point when that
11 claim is resolved the trust will then be
12 administered by your firm and...

13 MR. SPALLINA: No, that's not the case.
14 Each of the adult children for their own
15 children are designated to serve as trustee of
16 their children's trust.

17 THE COURT: So a distribution takes place
18 then once the money gets to the trust age?

19 MR. SPALLINA: Correct, and today again
20 the Shirley Bernstein trust does have liquid
21 assets in it. There was two properties, real
22 estate properties, the residential home and a
23 condo on the beach. The condo on the beach
24 sold back in April or May. There were funds
25 that came into the account at that time. Ted

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1 was going to make partial distribution. He
2 sent out an e-mail with tax I.D. numbers and
3 the naming of the trust to the five children
4 for the purposes of them opening up the
5 accounts.

6 THE COURT: Okay, what happened?

7 MR. SPALLINA: Seven of ten accounts were
8 opened and were actually funded this week with
9 \$80,000.

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THE COURT: Total or each?
MR. SPALLINA: Each.
THE COURT: Three of Eliot's --
MR. SPALLINA: Are not open. And we've
asked multiple --
THE COURT: And he executed documents to
open \$240,000 immediately or very quickly go
into those accounts?
MR. SPALLINA: Yes, sir.
THE COURT: Go ahead.
MR. SPALLINA: Now, there was a question
from our client as trustee of his mother's
trust because he has apprehension as do the
other siblings as to whether or not
Mr. Bernstein is the proper trustee for that
trust.

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THE COURT: Okay, all right.
MR. SPALLINA: We had discussions about
possibly making emergency distributions to pay
the expenses, but not necessarily --
THE COURT: Not giving the money directly
to him.
MR. SPALLINA: Not necessarily put in all
\$80,000 in all three of those trusts.
THE COURT: Does the trust pay expenses
directly or give money to the parent who pays
the expenses? Do you pay the electric bill or
do you give money to Eliot to pay the electric
bill?
MR. SPALLINA: Today?
THE COURT: Now, how does that work with
the others kids?
MR. SPALLINA: They were just funded, but
normally the trustee of the trust would pay for
expenses on behalf of the beneficiary if
they're minor children. Some of the children
here are adults. So to the extent they're
adults they would make distribution.
THE COURT: So what's the resolution of
the notary problem? Has that been resolved?
MR. SPALLINA: I can speak to it.

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MR. MANCERI: Please, Robert, go ahead.
The Judge is addressing you, be my guest.
MR. SPALLINA: In April of last year we

In Re_ The Estate of Shirley Bernstein.txt
4 met with Mr. Bernstein in April of 2012 to
5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he
9 signed these not notarized. When they were
10 sent back to be notarized, the notary notarized
11 them without him re-signing it, is that what
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed
17 affidavit from each of the children other than
18 Mr. Bernstein that the original documents that
19 were filed with The Court were in fact their
20 original signatures which you have in the file
21 attached as Exhibit A was the original document
22 that was signed by them.

23 THE COURT: It was wrong for Moran to
24 notarize -- so whatever Moran did, the
25 documents that she notarized, everyone but

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00051

1 Eliot's side of the case have admitted that
2 those are still the original signatures of
3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those
7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with
9 the oral argument for today.

10 So I only have in front of me Shirley's
11 estate. Shirley's estate is closed.

12 MR. MANCERI: Your Honor, could I bring
13 you up to speed on one thing maybe you're not
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion
17 to actually reopen the estate when we learned
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed
21 August 28th of this year. Do you have a copy
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,
24 but let's see. Because I have an August 28th

In Re_ The Estate of Shirley Bernstein.txt
file, I have that.

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00052

1 MR. MANCERI: You have that.
2 THE COURT: Motion to reopen the estate.
3 MR. MANCERI: Right, your Honor. We set
4 it for an evidentiary hearing.
5 THE COURT: When is it set?
6 MR. MANCERI: It's set for October 28th,
7 your Honor, for an hour at 11:00 a.m.
8 THE COURT: I'm going to decide on
9 Shirley's case whether to open it and how to
10 deal with whatever issues pertain to this, but,
11 Eliot, on your side you have an emergency
12 motion to freeze assets of the estate, so I
13 would say to you with a closed estate where the
14 PR, Simon, has been already discharged, and a
15 petition for discharge approved, what assets
16 are there in a closed estate where the estate
17 assets have already been distributed that I can
18 now in your motion freeze?
19 MR. ELIOT BERNSTEIN: The petition --
20 THE COURT: Listen to my question. It's
21 artful. What assets now that the estate's been
22 closed, that the estate's been fully
23 administered, and the estate has been
24 discharged, can I freeze that I could identify
25 still belong to Shirley's estate?

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00053

1 MR. ELIOT BERNSTEIN: I can't tell you
2 because I never got a document regarding the
3 assets.
4 THE COURT: But when you say it's an
5 emergency hearing --
6 MR. ELIOT BERNSTEIN: But I was supposed
7 to get those documents, correct?
8 THE COURT: Well, I don't know what
9 documents --
10 MR. ELIOT BERNSTEIN: I was a beneficiary,
11 unlike they said, me, my brother was cut out of
12 my mother's estate and my older sister.
13 THE COURT: They said you were a
14 beneficiary of personal property.
15 MR. ELIOT BERNSTEIN: No, I was the third
16 beneficiary to the entire estate.
17 THE COURT: All right, I don't know.
18 MR. SPALLINA: At one point he was.

19 MR. MANCERI: Early on, your Honor.
20 THE COURT: But on the will that was
21 probated?
22 MR. MANCERI: No.
23 THE COURT: Okay, so maybe you don't know
24 then, your mother changed her will, they say.
25 MR. ELIOT BERNSTEIN: Did my mother change

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00054

1 her will?
2 MR. SPALLINA: You know that your father
3 did.
4 MR. ELIOT BERNSTEIN: No, he asked if my
5 mother did.
6 MR. SPALLINA: Oh, yes.
7 THE COURT: Okay, all right --
8 MR. ELIOT BERNSTEIN: After she was dead
9 using alleged --
10 THE COURT: Not after she was dead.
11 MR. ELIOT BERNSTEIN: No, your Honor, my
12 father went back into my mother's estate and
13 made changes after we believe he was dead using
14 documents that are signed forged, by the way
15 those documents you're looking at --
16 THE COURT: Here's the thing.
17 MR. ELIOT BERNSTEIN: Yes.
18 THE COURT: You want me to freeze assets
19 of an estate that's already been fully
20 probated. I can't freeze something that
21 doesn't exist.
22 MR. ELIOT BERNSTEIN: Can you reopen it
23 because it was closed on fraudulent documents?
24 THE COURT: They asked for the estate to
25 be reopened. They want to have a hearing on

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00055

1 that.
2 MR. ELIOT BERNSTEIN: Okay.
3 THE COURT: Do you have responses to your
4 motion?
5 MR. MANCERI: Mr. Spallina filed it, but I
6 don't believe so yet, your Honor.
7 THE COURT: So we know one person wants to
8 reopen it, Eliot, correct? Who did you notice
9 of that motion?
10 MR. MANCERI: This motion was served on
11 Ted Bernstein, Pamela --
12 THE COURT: Ted, do you want the estate

In Re_ The Estate of Shirley Bernstein.txt
13 reopened, Shirley's estate reopened?

14 MR. THEODORE BERNSTEIN: I think you're
15 asking me a legal question, your Honor.

16 THE COURT: Does anyone represent you?

17 MR. MANCERI: Not at the moment, your
18 Honor. I may depending on how far this goes.

19 THE COURT: All right, well, what I'm
20 getting at is, is anyone opposing the reopening
21 of the estate?

22 MR. MANCERI: No, your Honor. We want to
23 open it to cure what his allegation is.

24 THE COURT: First step, one, is reopen.

25 MR. MANCERI: Correct.

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00056

1 THE COURT: So why do we have to wait
2 until the end of October to reopen the estate
3 when we could do that in mid-September?

4 MR. MANCERI: No reason, your Honor.

5 THE COURT: Any reason why we need to
6 wait?

7 MR. ELIOT BERNSTEIN: No.

8 THE COURT: All right, so...

9 MR. MANCERI: You haven't heard any
10 objections to this from anybody else, have you
11 Robert?

12 MR. SPALLINA: No.

13 THE COURT: All right, so get me up an
14 agreed order that I could open up the estate.

15 MR. MANCERI: Okay, you'll take care of
16 that, Robert?

17 MR. SPALLINA: Uh-Huh.

18 MR. MANCERI: We'll take the October
19 hearing off your docket.

20 THE COURT: You don't need an evidentiary
21 hearing to prove it, I'm going to do it, and
22 under these circumstances that makes sense.

23 Okay, so I'm going to have it reopen the
24 estate. So now the question is --

25 MR. MANCERI: Your Honor, just so I'm

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00057

1 clear.

2 THE COURT: Yes, Shirley's estate.

3 MR. MANCERI: The reason we asked to
4 reopen it is to cure or address this alleged
5 fraud.

6 THE COURT: But all I'm physically doing

In Re_ The Estate of Shirley Bernstein.txt
7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be
9 clear.

10 THE COURT: I don't want you to get rid of
11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it
14 is in relief that you want now that the estate
15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever
18 you want relief-wise to happen with respect to
19 Shirley's estate, not Shirley's trust, but
20 Shirley's estate, you could have a hearing on
21 that. I'll combine everyone who has an
22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to
24 say, your Honor, after this was noticed I got
25 into this matter. I have a conflict on the

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00058

1 28th at that hour. If we could move it to the
2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.
4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the
6 28th.

7 THE COURT: I don't know, I'll look.

8 So let me try to make some progress, all
9 right.

10 So today is whether in Shirley's estate
11 there's an emergency, here is my order, no.
12 Okay?

13 MR. MANCERI: Okay.

14 THE COURT: Next, whether -- what type of
15 evidentiary hearing, if any, needs to be held.
16 For Shirley's estate purposes I guess I have to
17 figure out the following: It appears that
18 there could be some problem in the documents
19 that took place to lead Shirley's estate to be
20 closed and distributed as it took place, okay
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to
24 documents that may have been improperly
25 notarized. Now. That doesn't mean that

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00059

1 anything happened, it just means the documents
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and
5 see whether there's anything that has to happen
6 differently than what already happened with
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in
9 making that determination, would you like us to
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to
18 understand something. Let's say you prove what
19 seems perhaps to be easy, that Moran notarized
20 your signature, your father's signature, other
21 people's signatures after you signed it, and
22 you signed it without the notary there and they
23 signed it afterwards. That may be a wrongdoing
24 on her part as far as her notary republic
25 ability, but the question is, unless someone

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00060

1 claims and proves forgery, okay, forgery,
2 proves forgery, the document will purport to be
3 the document of the person who signs it, and
4 then the question is, will something different
5 happen in Shirley's estate then what was
6 originally intended? Originally intended they
7 say, the other side, was for Simon to close out
8 the estate. The estate they say was small.
9 The estate gave everything to the trust and
10 that's what it did, and that was the end of the
11 estate.

12 Remember, this is not everything about
13 your parents and their estate planning. This
14 is one small component, Shirley's estate alone,
15 not her trust, and nothing to do with what
16 happened with Simon, okay, because that's not
17 before me. Simon's case is before Judge
18 French.

19 Having said that, one of the other reasons
20 why I have to consider whether your matter is
21 an emergency, even if there was something that

22 I could enter an order on or have a hearing on
23 immediately that could free up money from
24 Shirley that you personally would be entitled
25 to, you tell me you don't even know that you

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00061

1 were not a beneficiary of the estate, so
2 certainly you're not doing your groundwork to
3 tell me if it's an emergency or not because it
4 could be an emergency if you were a beneficiary
5 of her will that was probated, but you don't
6 even know one way or the other. So you could
7 be a stranger to the estate. She may have
8 disinherited you from the estate. She may have
9 chosen to only give you personal property. So
10 if you're not entitled to anything, you don't
11 have an emergency. You're not entitled to
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are
25 beneficiaries of the estate.

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00062

1 THE COURT: But what if you weren't a
2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.
4 My dad doesn't change that until a
5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it, but
7 you're interested in some financial relief. If
8 you don't want to go out and get a laborer job
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding
12 your children or paying your electric bills,
13 you are. You have to do what a parent does to
14 take care of their children. It doesn't sound
15 like you're doing everything that you can, but

16 that's technically not before me.

17 But in the meantime not knowing a whole
18 lot about this case, it's my first time I'm
19 really having this type of dialogue. I heard
20 some voice that said there's cash to feed your
21 children that could become readily in your
22 pocket or in someone's pocket to pay bills that
23 could help your children. I heard that. They
24 say the stumbling block to your children
25 getting the benefit of that money is you. I

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00063

1 don't know whether that's true or not, but if
2 you want your children to imminently get money
3 and they have imminent money to give your
4 children, maybe you want to sit with Ted and
5 that other side and see if there's some money
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money
13 comes to my children and it was supposed to
14 have gone to me, and these documents that are
15 all shady and unsigned wills with --
16 un-notarized wills and trusts don't stand. The
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.
20 Maybe two, three years from now as a result of
21 the same trust litigation you'll be right, but
22 in the meantime according to you there's money
23 that could feed your children that you don't
24 want to touch because you think the money
25 should go to you instead of your children that

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00064

1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their

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10 parents have. The children don't even know.
11 They're not even represented.

12 THE COURT: Well, the parents represent
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a
18 subpoena and said it. I had to get two lawyers
19 because my attorney couldn't represent both
20 sides of this.

21 MR. MANCERI: I'm very concerned about
22 something Mr. Bernstein just told The Court.
23 He's the one objecting they're in conflict,
24 he's stating from what I'm piecing together
25 that he believes that his children are getting

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00065

1 money that the parents really was supposed to
2 go to him personally. He's got the inherent
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I
5 don't.

6 THE COURT: Okay, here's the point, if
7 you're at a point where you're asking The Court
8 for an emergency because you can't feed
9 children, and there's someone around the corner
10 that's holding out a \$20 bill and says you
11 could have it to feed your children, and you
12 go, you know, I'm not going to take that to
13 feed my children because I want to have a court
14 determine that it really was mine, then I don't
15 know that you're treating this as an emergency.
16 Emergencies mean you figure out a way of
17 getting the money to your children sooner than
18 later, and they say it's happening imminently,
19 cash that could pay bills for your children.
20 That's what they say. If it's an emergency and
21 your kids are starving, and you as the parent
22 say that might be my money and not my kids', so
23 I want to wait for two or three years and let
24 the money stay in a bank account until I could
25 figure it out, and not feed my children, I

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00066

1 think you need to reflect upon some of your
2 decisions.

3 MR. MANCERI: Your Honor --

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THE COURT: What?
MR. MANCERI: I'm not saying we're going to do this, Judge, but this sounds like this may need an ad litem for these kids.
THE COURT: Well, I don't know, let's not add fuel to the fire.
MR. MANCERI: Because I'm troubled by what he's saying.
THE COURT: All right, so --
MR. ELIOT BERNSTEIN: Here's why I have not taken that money.
THE COURT: Why?
MR. ELIOT BERNSTEIN: Because if you told me, your Honor, that you just murdered him, and here's \$20 from his pocket to feed your kids from the crime --
THE COURT: If they were starving I would take the \$20.
MR. ELIOT BERNSTEIN: On that advice, I'll take the money.
THE COURT: If they were starving --
MR. ELIOT BERNSTEIN: On that advice --

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THE COURT: Your kids are starving. I'm not giving you advice.
MR. ELIOT BERNSTEIN: On that advice, I will --
THE COURT: The \$20 didn't murder anybody, did it? Did the \$20-bill murder someone?
MR. ELIOT BERNSTEIN: It's stealing money from people.
THE COURT: They're not -- this isn't stolen money. This is your parents' money.
MR. ELIOT BERNSTEIN: If I take that money and put it in my kids' accounts, it's actually taking money from what we believe are the true and proper beneficiaries --
THE COURT: Which is you.
MR. ELIOT BERNSTEIN: No, through -- one of, through --
THE COURT: So meanwhile if your kids are starving and you don't take the money, all I could say to you, there's obviously -- if you look at the documents I mean you're not going to confess to killing Kennedy as part of receiving the money, but if they want to give you money for your children and you don't want

In Re_ The Estate of Shirley Bernstein.txt
to take it because you think it's yours, and

25

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00068

1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's
6 part of a fraud that forged documents were used
7 to --

8 THE COURT: But it's still your parents
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take
17 the money without explanation on it. I agree.
18 Listen, the only reason I didn't want to take
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one
21 is accusing you of fraud. If they give you
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is

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00069

1 signing a receipt. You don't know where the
2 money came from. You're not signing off --
3 you're not saying that you make a declaration
4 that the money came from them, the other side
5 to you in only legal means. You're just
6 signing a receipt.

7 MR. MANCERI: But he is signing off on
8 that he's going to honor the terms of the
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee
11 for your children, you are -- you have a duty
12 to only use it for the children, not yourself.
13 Not you. You still have to work for you. Now,
14 you don't have to work for your children,
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on
18 your children if that's how you get it.

19 MR. ELIOT BERNSTEIN: Right.
20 THE COURT: That's all we're talking about
21 is money to feed your children.
22 MR. ELIOT BERNSTEIN: You see, if the
23 money came to me, it's also for me and my wife
24 and feeds our children.
25 THE COURT: That's not what they said. It

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00070

1 does not go to support you and your wife.
2 MR. ELIOT BERNSTEIN: If the money comes
3 to me as a beneficiary, it does. If all these
4 nonsense documents that are forged and --
5 THE COURT: If they want to give it to you
6 only under their condition this is because
7 their version is it belongs to your children.
8 MR. ELIOT BERNSTEIN: Right.
9 THE COURT: Don't accept it, you don't get
10 it. If you accept it, it goes to your
11 children. You may not like that, but it only
12 could be used for your children, because that's
13 the deal that they make. You take that deal
14 because you don't want your kids to starve.
15 You may not like it, you want to be
16 supported too, but they don't want to support
17 you. They don't think it's your money, they
18 think it's your children's money. So why turn
19 that -- maybe you're entitled to it, but why
20 turn down money that could help support your
21 children in the meantime.
22 MR. ELIOT BERNSTEIN: If your logic is
23 correct, your Honor, I agree.
24 THE COURT: Well, I don't know if my logic
25 is correct.

♀

00071

1 MR. ELIOT BERNSTEIN: Here's the legal
2 problem --
3 THE COURT: Stop, no, the hearing is over.
4 I'm not giving more legal advice. Your hearing
5 goes on, okay, see you.
6 MR. MANCERI: Your Honor, any chance of
7 resetting it?
8 THE COURT: I'm going to ask my office to
9 flip it around to the afternoon. I'll take
10 care of that.
11 MR. MANCERI: Thank you, your Honor.
12 We'll submit an order to your Honor.

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THE COURT: Okay, clear it with him and see if you could actually get something that makes sense. It's really narrow.

MR. MANCERI: It's very narrow. We've got the transcript, Judge.

THE COURT: It's only really that there's no emergency here. Everything everyone raises on the 28th.

MR. MANCERI: Very good, Judge. Do you think we can do it in an hour, Judge?

THE COURT: We'll try.

MR. MANCERI: Okay.

MR. ELIOT BERNSTEIN: I'm sorry, your

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00072

1 Honor, for calling an emergency.

2 THE COURT: All right. Just there's a lot
3 of work when you call something an emergency.

4 MR. ELIOT BERNSTEIN: I didn't understand
5 what you go through.

6 THE COURT: Okay, bye.

7 MR. MANCERI: It's an evidentiary, Judge,
8 we're going to call witnesses.

9 THE COURT: Witnesses and evidence.

10 MR. MANCERI: Very good.

11 - - -

12 (The proceeding was concluded at 2:15 p.m.)

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CERTIFICATE OF REPORTER

1
2
3 STATE OF FLORIDA)
4 COUNTY OF PALM BEACH)
5

6 I, Jessica Thibault, a Court Reporter,

In Re_ The Estate of Shirley Bernstein.txt

7 certify that I was authorized to and did
8 stenographically report the proceedings in the
9 above-styled cause before the Honorable Martin H.
10 Colin, pages 1 through 72; and that the transcript
11 is a true record of my stenographic notes.
12

13 I further certify that I am not a
14 relative, employee, attorney, or counsel of any of
15 the parties, nor am I a relative or employee of any
16 of the parties' attorneys or counsel connected with
17 the action, nor am I financially interested in the
18 action.
19

20 Dated this 17th day of September, 2013.
21

22 _____
23 Jessica Thibault
Court Reporter
24
25

♀
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