

IN THE CIRCUIT COURT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO. 502011CP000653XXXXSP

IN RE: ESTATE OF SHIRLEY BERNSTEIN,  
Deceased.

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ELIOT IVAN BERNSTEIN,  
Petitioner,

V.

TESCHER & SPALLINA, P.A., et al.,

Respondents.  
-----/

HEARING BEFORE THE HONORABLE  
MARTIN H. COLIN

Taken before Michael Todd Berkowitz, Shorthand  
Reporter and Notary Public in and for the State of  
Florida at Large.

- - -

200 West Atlantic Avenue  
Delray Beach, Florida 33344

Monday, October 28, 2013

4:00 P.M. - 5:09 P.M.

Michael T. Berkowitz, Court Reporter.

1 APPEARANCES:

2 On behalf of the Petitioner:

3 HUTH & PRATT

2101 N.W. Corporate Boulevard

4 Suite 400

Boca Raton, Florida 33431

5 BY: BRANDAN J. PRATT, ESQ.

6  
On behalf of Ted Bernstein, Donald R. Tescher, Esq.,  
7 Robert L. Spallina, Esq:

8 MARK MANCERI, ESQ.

2929 East Commercial Boulevard

9 Suite 702

Fort Lauderdale, Florida 33308

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P R O C E E D I N G S

THE COURT: All right. Good Afternoon.  
Judge Colin. 2011CP000653. The Estate of  
Shirley Bernstein. Can everyone make their  
appearances.

MR. BERNSTEIN: Ted Bernstein.

MR. MANCERI: Good afternoon, Your Honor.  
Mark Manceri. I'm here on behalf of Ted  
Bernstein as successor personal representative  
of the Estate of Shirley Bernstein, and I'm  
here on behalf of Donald Tescher and Robert  
Spallina.

MR. PRATT: Good afternoon, Your Honor.  
Brandan Pratt appearing on behalf of Eliot  
Bernstein, and I also have with me here today  
Eliot Bernstein and his wife, Candace  
Bernstein.

THE COURT: Okay. So this was a hearing  
that was set pursuant to an order of September  
24, 2013, that order being an order on notice  
on emergency motion to freeze assets, and it  
says the purpose of this hearing is to address  
any alleged improprieties or defects in the  
form of pleadings or other documents submitted

1 to the Court in furtherance of the Estate of  
2 Shirley Bernstein which was previously closed.

3 MR. PRATT: Your Honor, I'd like to evoke  
4 the rule of sequestration.

5 THE COURT: Hold on. I'll be right with  
6 you. Okay. All right. The rule was evoked.  
7 Are there any witnesses on either side that  
8 are not parties that are going to testify?  
9 Please stand up.

10 MR. PRATT: Non parties, Your Honor?

11 THE COURT: Parties are allowed to stay.

12 MR. PRATT: I believe Mr. Tescher and Mr.  
13 Spallina are non parties to the estate  
14 proceedings.

15 MR. MANCERI: No. They have been named by  
16 your client.

17 THE COURT: They're in the heading of the  
18 adversary proceeding.

19 Okay, what's your name, ma'am?

20 MS. MORAN: Kimberly Moran.

21 THE COURT: So Kimberly, you may or may not  
22 be called as a witness. You need to wait  
23 outside. You can't allow anyone to discuss  
24 their testimony in your presence, or you  
25 participate in that as well. If someone

1 violates what I just said, find my bailiff,  
2 let me know, and we'll deal with them.

3 MR. ROTH: Just to let you know, Your  
4 Honor, David Roth on behalf of Ms. Moran.

5 THE COURT: Okay. Ms. Moran, that lady  
6 that's just leaving?

7 MR. ROTH: Yes, sir.

8 THE COURT: Just for my benefit, the  
9 lawyers can tell me, Ms. Moran is employee  
10 of --

11 MR. MANCERI: Tescher & Spallina, P.A.

12 THE COURT: I remember that. I've got it.  
13 So it sounds like, Mr. Pratt, I think probably  
14 from an orderly fashion, since I reserved this  
15 time for you to raise on behalf of your client  
16 some irregularities that we spoke about, I  
17 think you're up.

18 MR. MANCERI: Your Honor, if I might, just  
19 to refresh your memory, we had filed a motion  
20 to reopen the estate. Tescher & Spallina had  
21 filed a motion to reopen. Mr. Eliot Bernstein  
22 was on here on his emergency motion that was  
23 denied; that's what he filed.

24 THE COURT: I said there was no -- so the  
25 order I have is the order on the emergency

1 motion to freeze assets. I said there's no  
2 emergency.

3 MR. MANCERI: Correct.

4 THE COURT: But I announced what the  
5 purpose of the hearing was.

6 MR. MANCERI: Yes. You did. It's embodied  
7 of the order, Your Honor.

8 THE COURT: So you want to go forward to  
9 address irregularities in the pleadings that  
10 Eliot says exist.

11 MR. MANCERI: I believe that's the way we  
12 left it.

13 MR. PRATT: Your Honor, I disagree in that  
14 he filed a motion to reopen the estate, an  
15 agreed order --

16 THE COURT: I reopened it. That's not an  
17 issue. So whose pleadings are filed that are  
18 challenging the propriety of the pleadings?

19 MR. MANCERI: That would be Mr. Bernstein.  
20 He filed it, but he filed it as part of the  
21 emergency motion.

22 THE COURT: I understand. I'm not  
23 hearing -- I'm not sure what you're getting at  
24 Mr. Manceri, so what is it that you're seeking  
25 to do?

1           MR. MANCERI: I'm just addressing the order  
2           Judge, that you announced, that's all I'm  
3           addressing.

4           THE COURT: Paragraph three of the  
5           September 24th order, it says the purpose of  
6           today's hearing is to address any alleged  
7           impropriety or defect in the form of the  
8           pleadings or other documents submitted to the  
9           court in furtherance of the closing of the  
10          Estate of Shirley Bernstein.

11          MR. MANCERI: That's correct, Your Honor.

12          THE COURT: The person who filed the  
13          request to, or who raised an allegation of  
14          impropriety, was who?

15          MR. MANCERI: Actually, it's my position  
16          that Mr. Tescher or Mr. Spallina raised it  
17          voluntarily in their petition to reopen.  
18          While you did reopen it, they were the one's  
19          who actually brought the issue forward.

20          THE COURT: But I see their August 28th  
21          motion, I reopened the estate, so they said  
22          that they thought they wanted to give, using  
23          their words, persons the opportunity to cure  
24          the irregularities. Someone needs to formally  
25          identify the irregularities, unless you

1 stipulate what those are.

2 MR. MANCERI: There's no written  
3 stipulation as to that.

4 THE COURT: So to do this in an orderly  
5 way, which is all I'm getting at, you think  
6 that you -- if I let you go first on your  
7 side, Mr. Manceri, what irregularities, if  
8 any, are you going to point out took place?

9 MR. MANCERI: We're going to point out,  
10 take you through the issue of the submittance  
11 of the original waivers which were returned by  
12 the clerk, because of your method of doing  
13 that, that required notarization, and then  
14 take you through the affirmation of those  
15 original waivers with current affidavits from  
16 the beneficiary reaffirming that they, in  
17 fact, acknowledge the original waivers which  
18 were not notarized with current addresses,  
19 with original affidavits attached to them, and  
20 we would walk the Court through that exercise.

21 THE COURT: Stop there. What do you want  
22 to tell me, Mr. Pratt, as to why you should go  
23 first?

24 MR. PRATT: I think that whole thing was  
25 brought about by the fact that my client,



1 Eliot Bernstein, in fact filed the emergency  
2 motion. As far --

3 THE COURT: That gets your nowhere. So  
4 we're long passed that point.

5 MR. PRATT: Number two, that they were  
6 seeking to reopen the estate. The estate was  
7 already reopened, and I don't know why they  
8 would be challenging the documents that they  
9 used to close the estate, but for Mr.  
10 Bernstein here filing his emergency motion in  
11 which although it was titled emergency, it  
12 bought up all of these issues that we're  
13 currently here before this Court. It was only  
14 after he filed the motion in which he was  
15 contesting the validity of the waivers that  
16 this Court -- that they ended up filing their  
17 motion to reopen the estate. I wasn't --

18 THE COURT: So what benefit is there to  
19 this process for you to go first? Both sides  
20 are going to go. We're only talking about  
21 who's going first.

22 MR. PRATT: First off, he's the petitioner.  
23 I don't know that they're going to necessarily  
24 address all of the issues that we're going to  
25 bring up.

1           THE COURT:   So listen carefully.   Mr. Pratt  
2 goes first.

3           MR. MANCERI:   Yes, sir.

4           THE COURT:   That way we can move along.   Go  
5 ahead.

6           MR. PRATT:   All right.   I just brought some  
7 legal authority here that I'd like to point  
8 out.   May I approach, Your Honor?

9           THE COURT:   Sure.   I'll look at that at the  
10 right time.

11          MR. PRATT:   I'm going to give a brief  
12 opening statement before I call my first  
13 witness, just to give an overview of why we  
14 want the estate, I guess, to remain open,  
15 rather than being closed.   I'm kind of a  
16 latecomer to the case, but I realize that's  
17 kind of the issue here.

18          THE COURT:   That would be helpful.   Tell me  
19 what the issue is; that's true.

20          MR. PRATT:   This issue is, as far I  
21 understand it, whether or not the estate will  
22 remain open.   Although there was an order that  
23 reopened the estate, my understanding  
24 essentially is the personal representative  
25 essentially wants at this hearing to re-close

1 the estate.

2 THE COURT: Based upon the most recent  
3 waivers of accountings, petition for  
4 discharge, and the pleadings filed October  
5 23rd; is that correct?

6 MR. MANCERI: It's not exactly correct,  
7 Your Honor. We have no petition for discharge  
8 filed at the moment. The order specifically  
9 addresses what you're going to hear today, we  
10 had this whole thrust in parity if you  
11 remember at the end of the last hearing with  
12 Mr. Bernstein who was without counsel at the  
13 time, that's why the order pursuant to your  
14 ruling is crafted the way it's crafted. It's  
15 a limited issue. You told Mr. Bernstein we're  
16 not going to be discussing the Shirley  
17 Bernstein Trust and all the distributions. We  
18 went through this whole anemic experience.  
19 You went through that whole thing.

20 THE COURT: So the issue is, is the estate  
21 going to remain open, or be closed, but  
22 there's no petition for discharge to close it,  
23 I'm told.

24 MR. PRATT: Or essentially address the  
25 validity of the waivers. If all of the

1 beneficiaries have signed off on it, and we  
2 contend that they haven't, it would be a  
3 foregone conclusion that the estate would then  
4 be closed.

5 THE COURT: So who are the beneficiaries  
6 that have to sign off?

7 MR. PRATT: Well, I mean that's one of the  
8 issues, because --

9 THE COURT: From your point of view, who  
10 are the beneficiaries?

11 MR. PRATT: Our point of view is the  
12 beneficiaries that need to sign off would be  
13 one of the decedents, essentially.

14 THE COURT: Who?

15 MR. ATTY: One of the decedents, Simon  
16 Bernstein, and then also potentially Eliot,  
17 three of Simon and Shirley's children, Eliot,  
18 Lisa and Jill, and if they contend there was  
19 a --

20 THE COURT: Just who do you say that -- who  
21 are the people that need to sign off? Simon,  
22 Eliot, Lisa, Jill.

23 MR. PRATT: Yea. If they contend there was  
24 a valid power of appointment executed before  
25 the estate was closed, then there would be a

1 total of six grandchildren that would have to  
2 sign the waivers in some sort of capacity. If  
3 they were minors, then they would have to have  
4 that parents sign waivers, that sort of  
5 capacity, or an administrator ad litem.

6 THE COURT: Okay. Go ahead.

7 MR. PRATT: There is also some issue  
8 whether or not the power of appointment  
9 expanded to include for additional  
10 grandchildren. Some of those grandchildren  
11 are over the age of 18, and if they contend  
12 that there was a power of appointment that was  
13 validly executed, which I believe that's the  
14 position they're taking, that would also  
15 include waivers by four additional  
16 grandchildren, Eric, Michael, Eliot, and  
17 Molly, and there would have been no documents  
18 or waivers signed by any grandchildren, that  
19 have been filed in this case.

20 And as far as that's concerned, Eliot's  
21 waiver was invalidly executed. The reasons  
22 why it was essentially, as shown in the  
23 Sustrassen case, there has to be an  
24 intentional relinquishment of the right. The  
25 evidence that we're going to present is going

1 to show that he signed the waiver, but in  
2 conjunction with him signing the waiver he was  
3 always under the impression he would still get  
4 financial information associated with the  
5 estate. They sent him the waiver without any  
6 financial information. He sent it back. He  
7 sent it along with an e-mail saying, I'm still  
8 going to get all this financial information.  
9 There's a series of e-mail's spanning  
10 throughout the next year, e-mail's and letters  
11 from Mr. Bernstein's prior counsel, in which  
12 he requested the information. And then as far  
13 as Eliot Bernstein's waiver is concerned, this  
14 court should not consider that to be valid.

15 Also, many of the waivers have been  
16 forged. I think the Court might recall from  
17 the last hearing there was a series of waivers  
18 that had been forged, that occurred after the  
19 prior personal representative had, in fact,  
20 died, and so that's another impropriety that  
21 we are going to present evidence on.

22 THE COURT: Okay. Then so if I find that  
23 Eliot's waiver was invalidated, you want the  
24 estate to remain open.

25 MR. PRATT: Exactly.

1 THE COURT: And then do what?

2 MR. PRATT: We want to receive the  
3 financial information that he's been  
4 requesting since the estate was opened. He  
5 didn't even find out he was a beneficiary  
6 until the time he received the waiver, and  
7 essentially we want to receive financial  
8 information and want a proper estate  
9 accounting, and if everything is as they say  
10 it is, then the estate will be closed after  
11 the production of various documents and a  
12 final accounting if we need to have a final  
13 accounting.

14 THE COURT: So if you prove that there were  
15 prior waivers that had been forged, what does  
16 that do?

17 MR. PRATT: Well, as far as the forgery  
18 goes, those are going to be invalid.

19 THE COURT: I'm told now that those same  
20 individuals, and Mr. Manceri correct me if I'm  
21 wrong, have now filled out and sent in new  
22 waivers.

23 MR. MANCERI: Not only that, Judge, they  
24 have already been filed.

25 THE COURT: That's what I mean; otherwise,

1 I would not have them in the file.

2 MR. PRATT: Yea. As far as those waivers  
3 go, that's fine except for two important  
4 points. One is that Simon Bernstein's waiver,  
5 which was one of them that was forged, he's  
6 deceased, so obviously he could not have  
7 signed that waiver, so without some waiver or  
8 something from the personal representative of  
9 his estate, it wouldn't be able to close, and  
10 then in addition to that although there are  
11 several children that have reaffirmed their  
12 waivers, it would not apply to all of the  
13 grandchildren who don't have any waivers on  
14 file.

15 THE COURT: So let's put aside for a moment  
16 that Eliot's saying I don't want my waiver  
17 recognized, I want financial information, I  
18 may want an accounting, and see what goes from  
19 there, you only represent him, Eliot; correct?

20 MR. PRATT: That's right.

21 THE COURT: Is Simon represented here, or  
22 anyone, since Simon's deceased, anyone on his  
23 behalf here for him?

24 MR. PRATT: There was an order that  
25 appointed Ted as the personal representative



1 of his estate when it was reopened.

2 THE COURT: Is he, Ted Bernstein, PR of  
3 Simon Bernstein, complaining about any aspect  
4 of Shirley Bernstein's estate, including your  
5 position that his, Simon's wavier may have  
6 been improper?

7 MR. PRATT: I'm unaware of any complaints  
8 he made. We questioned whether or not he has  
9 a conflict of interest, whether or not he is a  
10 co-defendant, in which they then allege that  
11 millions of dollars have been taken, and there  
12 is an association with the estate, and we  
13 think there is a conflict with his estate in  
14 the sense that Ted may have absconded with  
15 millions of dollars without Sy's knowledge,  
16 and therefore they may have a conflict of  
17 interest in that respect.

18 THE COURT: I would deal with that in  
19 something filed in Simon's estate. We're  
20 limited only to Shirley's estate here.

21 MR. PRATT: Yes.

22 THE COURT: And the fact that the other  
23 individuals who supposedly had their waivers  
24 executed improperly, who now may have tried to  
25 cure them, they're not seeking any further

1 relief from Shirley's estate; is that true?

2 MR. PRATT: I believe Eliot is the only one  
3 who is seeking to have documents produced and  
4 have a financial accounting issued.

5 THE COURT: So from a practical point of  
6 view, which we always have to keep our eye on  
7 the ball, is there any reason -- I know from  
8 the last hearing that there was a lot about  
9 the alleged impropriety of the prior waivers,  
10 but now that you have summarized the issues as  
11 you have, is there any reason why, today, I  
12 would go beyond, now that I have opened  
13 Shirley's estate and I am entering an order  
14 dealing with Shirley's estate, I wouldn't  
15 focus in on the issue whether Eliot has waived  
16 as a beneficiary whatever rights purportedly  
17 he had waived, and if I say no waiver, what to  
18 do about it. Is that the only area that Eliot  
19 could get some relief from?

20 MR. PRATT: That and whether or not this  
21 court believes that the grandchildren would  
22 have also had to sign waivers in order to have  
23 the estate closed.

24 THE COURT: The grand children of who?

25 MR. PRATT: The grandchildren of Shirley

1 Bernstein's estate.

2 THE COURT: But her children, the parents  
3 of those grandchildren are the one's who  
4 signed the waivers?

5 MR. PRATT: Yea. But they signed  
6 essentially, and there was no statement in  
7 there that they were signing on behalf of  
8 their children. And in addition, there's a  
9 contention that some of the grandchildren are  
10 beyond the age of 18, so it would not be any  
11 sort of natural guardianship that would occur.

12 THE COURT: So what's Eliot's standing to  
13 deal with that?

14 MR. PRATT: What's his standing to deal  
15 with that? The alleged --

16 THE COURT: The alleged issue that  
17 grandchildren may or may not be participating  
18 in this proceeding.

19 MR. PRATT: As far as whether or not the  
20 estate was properly closed or not.

21 THE COURT: Even though he may have no  
22 financial interest in where that issue may go?

23 MR. PRATT: He does have a financial  
24 interest in it.

25 THE COURT: How is that an interest?

1           MR. PRATT: Because that would change the  
2 way the estate was distributed.

3           THE COURT: Okay. How?

4           MR. PRATT: Shirley's will devises her  
5 assets to three of her five children. It  
6 actually devises it to a trust, which provides  
7 for her husband, which ultimately is supposed  
8 to go to three of her five children. There  
9 was a power of appointment in association with  
10 one or more of those trusts that gave her  
11 husband, Simon, the ability to potentially  
12 change the beneficiaries, but it was a limited  
13 power of appointment, and I think a question  
14 exists of, one, whether that document was  
15 validly executed or not, and two, did that  
16 document go above and beyond what was required  
17 or what was allowed, because there's a  
18 definition section underneath Shirley's trust  
19 that says she defines her children as Eliot,  
20 Lisa, and Jill, and specifically says for  
21 purposes of this trust Ted and Pam shall be  
22 treated as predeceased, and all their children  
23 should be treated as predeceased. So if there  
24 is a determination or some sort of  
25 distribution in which now they're telling

1 Eliot that he is a beneficiary, and now all  
2 the sudden he isn't a beneficiary of the  
3 estate --

4 THE COURT: You already made your point.  
5 We will deal with whether Eliot is a  
6 beneficiary, whether he's had a valid wavier,  
7 I've got that part down, but the question is  
8 are there any other issues I need to deal with  
9 today.

10 MR. PRATT: That I think is the primary  
11 issue, but also the issue of whether certain  
12 people are considered beneficiaries of the  
13 estate.

14 THE COURT: For Eliot to raise that, he has  
15 to be an interested person in the outcome of  
16 that proceeding.

17 MR. PRATT: He is.

18 THE COURT: How is he affected by whether  
19 the grandchildren are deemed to be  
20 beneficiaries or not?

21 MR. PRATT: Because if -- it's kind of a  
22 two-stage analysis. If the grandchildren  
23 aren't beneficiaries, then he is not a  
24 beneficiary. Then the second phase of that is  
25 whether or not if the power of appointment was

1           validly executed, then the question becomes  
2           are his children entitled to half of the  
3           estate, or are they entitled to three-tenths  
4           of the estate.

5           THE COURT:   Okay.   Tell me what the will  
6           says.

7           MR. PRATT:   The will devices everything to  
8           a trust.

9           THE COURT:   So they disagree with that.  
10          The will should say what it says, there  
11          shouldn't be too much dispute about that.   Are  
12          you comfortable you know what it says, because  
13          as soon as you said that --

14          MR. PRATT:   I welcome to hear their  
15          interpretation.

16          THE COURT:   Mr. Manceri, discipline  
17          yourself right now and only tell me that you  
18          can participate if you can answer my  
19          questions.   I don't want advocacy now.   Tell  
20          me what the will says.

21          MR. MANCERI:   The will says that all the  
22          tangible personal property goes to Simon, who  
23          survived his wife, Shirley, and the residue  
24          goes into what's known as an existing trust,  
25          trust which we will call the Shirley Bernstein

1 Trust for purposes of the hearing.

2 MR. PRATT: I agree with that.

3 THE COURT: So at the end of the day of  
4 this estate litigation is there a contest that  
5 that's the provisions of the will? You said  
6 that you agree.

7 MR. PRATT: Yes.

8 THE COURT: So whatever Shirley had  
9 available to devise personalty to Simon, who's  
10 deceased and we can maybe deal with that in  
11 his estate, everything else to Shirley's  
12 trust.

13 MR. PRATT: Yes.

14 THE COURT: So this order limited us to  
15 Shirley's estate, not to her trust. We were  
16 pretty clear. Maybe I'm just confused.

17 MR. PRATT: That's the financial. The  
18 analysis goes a little bit deeper than that,  
19 because --

20 THE COURT: If Shirley's assets, other than  
21 the personalty goes to her trust, none of the  
22 children are the beneficiaries, or  
23 grandchildren are the beneficiaries under  
24 Shirley's will. Her trust is; correct?

25 MR. PRATT: That's right, but --

1           THE COURT: Once the trust receives  
2           whatever assets there are, the provisions of  
3           the trust will rise and fall on who gets what;  
4           is that true, or not?

5           MR. PRATT: Pretty much.

6           THE COURT: So his waiver, going back, was  
7           the waiver a waiver that said to Eliot waive  
8           whatever interest you may have in Shirley's  
9           estate?

10          MR. PRATT: No. It was just a waiver of a  
11          financial accounting and service of a petition  
12          for discharge, just the normal estate closing  
13          waiver. That's all it was.

14          THE COURT: It sounds like though that on  
15          the estate level of Shirley this is really a  
16          simple matter. Is there something that I'm  
17          missing, on the estate level? You know, I  
18          mean one thing we learned here is we pick the  
19          manner in which we do our battles. It sounds  
20          like on the estate level Shirley's probate  
21          estate is simple. Simon gets her personalty,  
22          and her trust gets everything else. What  
23          could be more simple than that?

24          MR. PRATT: I would agree that it is  
25          simple.



1           THE COURT:   Okay.   So you may have some  
2           litigation, some action pending in her trust  
3           case.   Is there?

4           MR. PRATT:   There is no trust case, right  
5           now, and I just want to point out a couple of  
6           things as far as the trust code is concerned,  
7           and these are some of the statutes and court  
8           rules that I've handed you.   Florida probate  
9           5.240 basically says, if you have a situation  
10          where the personal representative of an estate  
11          is the same, it says a pour over will type of  
12          situation pours all the assets into the trust,  
13          and that trustee is the same, the qualified  
14          beneficiaries of the trust are considered  
15          interested parties for the estate proceedings.

16          THE COURT:   Let's assume I make everybody  
17          interested, you're still telling me that the  
18          command of the estate is --

19          MR. PRATT:   We just want to know.

20          THE COURT:   -- to pour over everything to  
21          the trust.   Let me read between the lines  
22          here.   I don't know what the trust says.   I'm  
23          not asking about that.   Is the issue whether  
24          the PR of the estate -- and who's the PR, Ted?

25          MR. PRATT:   Yes.   Currently.

1           THE COURT: Whether he is carrying out  
2           Shirley's mandate by transferring all of  
3           Shirley's assets to the trust; is that an  
4           issue?

5           MR. PRATT: I think that's it. We want to  
6           know how much was in her estate, and we want  
7           simple information related to the estate  
8           administration. The estate inventory said  
9           there was \$25,000. Eliot Bernstein believes  
10          they were worth millions of dollars, and there  
11          could have been assets entitled to the trust,  
12          but this is part of a bigger picture. We want  
13          to see what happened in the estate, so that we  
14          can make sure everything got properly  
15          transferred over to the trust.

16          THE COURT: Tell me what the provisions of  
17          the trust say. Do you know?

18          MR. PRATT: I know what the provisions of  
19          the trust say. Essentially there is a trust  
20          that provides for the benefit of her husband  
21          while he is alive, and then upon her death the  
22          assets are supposed to be distributed to three  
23          of her five children.

24          THE COURT: Who?

25          MR. PRATT: Eliot, Lisa, and Jill. Now,

1           there was also a power of appointment that  
2           was -- I guess the trust also contained  
3           provisions that said for the purposes of the  
4           trust two of her five children, Ted and Pam,  
5           should be treated as predeceased. And then  
6           there is a power of appointment that's named  
7           in Simon's will that says I want to appoint  
8           all of this money to all of his grandchildren,  
9           which is a little bit different from the  
10          provisions that were in Shirley's document.

11           THE COURT: So I'm just lost in one area,  
12          because you mentioned Simon's will, so how  
13          does Simon's will get involved?

14           MR. PRATT: Simon's will gets involved  
15          because Shirley gave him a power of  
16          appointment, a limited power of appointment,  
17          to change the beneficiaries.

18           THE COURT: In the trust.

19           MR. PRATT: Exactly.

20           THE COURT: So Simon during his lifetime  
21          could or not execute the power of appointment.

22           MR. PRATT: Exactly.

23           THE COURT: Did he?

24           MR. PRATT: There is a power of appointment  
25          that exists in his will.

1           THE COURT: But you can exercise a power of  
2           appointment in a will, so when he dies, as  
3           part of his will he's saying here's how I want  
4           to exercise the power of appointment that  
5           Shirley gave me.

6           MR. PRATT: Yes.

7           THE COURT: That only manifests itself  
8           because he survived her. What does he do with  
9           that power of appointment.

10          MR. PRATT: As far as we understand, he  
11          attempts to name -- he says it goes to all my  
12          grandchildren, so there's 10 of them.

13          THE COURT: So bypassing, Eliot, Lisa, and  
14          Jill.

15          MR. PRATT: And Ted and Pam.

16          THE COURT: Ted and Pam already out. So  
17          the five children are out, and the 10  
18          grandchildren are in.

19          MR. PRATT: Exactly. There's a question  
20          whether that power of appointment was used  
21          more broadly than was given to him.

22          THE COURT: So in what case does that get  
23          litigated?

24          MR. PRATT: That would not be in this case.  
25          That would have to be in a case involving his

1 estate, or likely his trust, or maybe a case  
2 that was against his trust and then put into  
3 his estate. We don't even know if that  
4 happened.

5 THE COURT: So let's get back to Shirley's  
6 estate.

7 MR. PRATT: Yes.

8 THE COURT: So it sounds like Eliot may be,  
9 either him or his children if the power of  
10 appointment was executed, a beneficiary of  
11 Shirley's trust. I'm working backwards. So  
12 he wants to get information to make sure that  
13 what Shirley owned at the time, or had an  
14 ownership interest in at the time of her death  
15 was transferred properly through her will and  
16 poured over into her trust; is that what he  
17 wants?

18 MR. PRATT: Yes.

19 THE COURT: Is that something that he is  
20 legally entitled to?

21 MR. MANCERI: Your Honor, it's our  
22 contention he is not legally entitled to it,  
23 because he did a full waiver of every interest  
24 in the estate.

25 THE COURT: But for the waiver, he wouldn't

1           be interested. Would he be allowed to that  
2           information?

3           MR. MANCERI: His children would  
4           technically be interested. None of the  
5           children are beneficiaries, as you correctly  
6           stated, Your Honor.

7           THE COURT: The trust is the beneficiary.  
8           You mean of the trust.

9           MR. MANCERI: That's correct.

10          THE COURT: Because a power of appointment  
11          was executed.

12          MR. MANCERI: Right. By Simon to all the  
13          grandchildren.

14          THE COURT: But I'm trying to get passed  
15          some of the things that have to be ultimately  
16          litigated in some other forum. Are we down to  
17          whether the waiver was validly executed or  
18          not?

19          MR. MANCERI: I think that's the bulk of  
20          it, certainly, Your Honor, yes, whether the  
21          waiver was validly executed.

22          THE COURT: If the waiver was not validly  
23          executed, what Mr. Pratt is saying is he wants  
24          financial information that may include an  
25          accounting so he can determine, he, Eliot,

1           that what Ted as PR transferred over from  
2           Shirley's estate poured over into her trust is  
3           what should have gone.

4           MR. MANCERI:   An accounting of the probate  
5           estate he's talking about.

6           THE COURT:   The probate estate.

7           MR. MANCERI:   Right.   I think he can  
8           theoretically arguably ask for that, Your  
9           Honor, on behalf of his children.

10          THE COURT:   I know you attacked the waiver,  
11          and you say it was valid.   He says it's not.  
12          What's the harm by giving him the information,  
13          the financial disclosure of what Shirley's  
14          estate poured over into the trust.

15          MR. MANCERI:   Simply, Your Honor, that he  
16          signed the waiver and we think this is all  
17          done and behind us.   If he wants to proceed  
18          about a trust accounting he could get that  
19          same information in the trust arena by asking  
20          on the receipt side.

21          THE COURT:   Every time this happens in a  
22          trust case everyone says there's some bar, but  
23          you didn't ask for it or get it in the estate  
24          case.   That's the experience I get when that  
25          happens.

1 MR. MANCERI: We would certainly like --

2 THE COURT: So in Shirley's estate, was  
3 there an inventory done?

4 MR. MANCERI: I presume there is.

5 MR. PRATT: There was.

6 MR. MANCERI: You can tell you, Your Honor,  
7 I want to clarify, and you asked me not to be  
8 an advocate, but there are a couple of facts I  
9 want to clear up. The co-personal  
10 representatives of Simon's estate are Mr.  
11 Spallina and Mr. Tescher, not Ted Bernstein.  
12 Judge French has Simon Bernstein's estate, in  
13 case you weren't aware of that.

14 THE COURT: Okay.

15 MR. MANCERI: To go back --

16 THE COURT: I'm happy. That's good. Let  
17 someone else do it.

18 MR. MANCERI: We brought that up at the  
19 last hearing, but I don't know if you recall  
20 that or not, Judge. We would like to address  
21 the waiver. Yes, there was an accounting  
22 done. I don't know if we have the inventory.  
23 It certainly would be in the file if it was  
24 done. I don't have a copy handy.

25 THE COURT: Even if he did a waiver, I can



1 still give him the inventory. I can open it.  
2 I can get it to him.

3 MR. PRATT: We have the inventory.

4 MR. MANCERI: They have the inventory.

5 MR. PRATT: We received the inventory after  
6 the estate was closed.

7 THE COURT: You got the inventory. Was  
8 there an accounting in the estate of Shirley  
9 Bernstein?

10 MR. MANCERI: If it was waived, Your Honor,  
11 that's the point.

12 THE COURT: All right. So what are the  
13 other financial documents other than the  
14 inventory that Eliot wants, Mr Pratt?

15 MR. MANCERI: Judge, if I might, the  
16 inventory listed \$25,000 of tangible personal  
17 property, which all went to Mr. Bernstein as  
18 surviving spouse.

19 THE COURT: Okay. And that's it.

20 MR. MANCERI: That's it.

21 THE COURT: So according to the inventory  
22 there were no assets poured over from  
23 Shirley's estate into the trust.

24 MR. MANCERI: It was all funded pre-death.  
25 That's my understanding, Your Honor.

1           MR. PRATT: I mean, we don't have any  
2 documents to support that verification. We  
3 don't know how the attorneys have been paid,  
4 and we don't have any verification they were  
5 the only assets that were in there. Plus --

6           THE COURT: The inventory is a verified  
7 document.

8           MR. PRATT: Right.

9           THE COURT: So that's -- so you have an  
10 inventory that says personalty only, and I  
11 could look it up. It's sealed. I can get it,  
12 but you have it already. If that's what it  
13 says, then Ted as PR is saying that's what I  
14 turned over as PR, and so Simon got the  
15 personalty.

16          MR. MANCERI: Simon was the PR at that  
17 time, Your Honor.

18          THE COURT: He took it, that's right,  
19 because Ted got appointed when Simon died, and  
20 then nothing then is passing through the will,  
21 and Mr. Manceri just said to the extent to  
22 which Shirley's trust may have assets, it was  
23 funded pre-death, which happens, and there is  
24 no document in the estate that's going to  
25 verify that.

1           MR. PRATT: I mean if that's truly the  
2 case, then why not just produce an accounting?

3           THE COURT: He's saying that's the case.  
4 Other than the lawyers saying that, I don't  
5 know. He's saying that was done, but more  
6 importantly Mr. Eliot can maybe do whatever  
7 he wants to do in the trust case to see what  
8 went into the trust, and that would be what  
9 Mr. Manceri is describing as the pre-death  
10 funding. But for purposes of Shirley's estate  
11 trying to put things in a step-by-step  
12 process, if her will says what it said, the  
13 inventory says no assets other than personalty  
14 of Shirley that went to Simon -- I mean, I'm  
15 here to determine should the estate be closed  
16 and then go to Judge French, have a good time.  
17 What else is there really to accomplish, even  
18 though we may have had a problem with the  
19 waivers, I understand that, but now they've  
20 reaffirmed them, so to -- I mean to spank  
21 somebody that may deserve to get spanked for  
22 doing something wrong, how does that put  
23 dollars, or benefits, in Eliot's pocket?

24           MR. PRATT: I guess part of it is the fact  
25 that there hadn't been really any information

1 provided all along. He never really got any  
2 information until the estate was actually  
3 closed, so I mean that's part of his reasoning  
4 for wanting to reopen the estate and get the  
5 financial information. I think --

6 THE COURT: The answer is none. There is  
7 no estate, they're representing. I can put  
8 Ted under oath let you question him, but the  
9 issue is, which I'll do, whether there are any  
10 assets other than what's reflected on the  
11 inventory, and he'll say, I assume, based on  
12 what Mr. Manceri just told me, he'll say no.  
13 And so you can't produce financial documents  
14 on things that don't exist to the matter that  
15 we're speaking about.

16 MR. PRATT: I agree, but there could be an  
17 accounting that was produced.

18 THE COURT: You're not going to produce an  
19 accounting of nothing, and the purpose of an  
20 accounting is to get some verification that  
21 what was processed through the PR's hands is  
22 accurate. He'll testify in a moment just what  
23 Mr. Manceri probably told us, that the answer  
24 is nothing.

25 MR. PRATT: Okay.

1 THE COURT: So how does that --

2 MR. PRATT: I agree if what their  
3 representations are true it's possible we  
4 could receive some financial information.

5 THE COURT: Other than -- I mean, you got  
6 the inventory. That shows basically that  
7 there are no estate assets other than  
8 personalty, which I assume is not an issue  
9 here. So today I'm not going to have them  
10 draw up an accounting that says nothing,  
11 because that doesn't do any good. Do you  
12 agree? Who's that going to benefit if he goes  
13 through the process of actually filing an  
14 accounting that says what the inventory says,  
15 personalty and nothing else.

16 MR. PRATT: Can we take a short break?

17 THE COURT: Absolutely. Sure. Go ahead.

18 (Thereupon, a short recess was taken.)

19 THE COURT: What did he say?

20 MR. PRATT: Your Honor, my client questions  
21 the accuracy of the inventory and would like  
22 the ability to utilize the estate proceedings  
23 to verify it's accuracy.

24 THE COURT: Well, I appreciate that he  
25 challenges that, but you haven't told me what

1 basis he challenges that on.

2 MR. PRATT: Well, by virtue of the fact he  
3 believes his mother and father were worth  
4 millions and millions of dollars, yet the  
5 inventory of the estate contains only for  
6 \$25,000.

7 THE COURT: But we heard Mr. Manceri tell  
8 us that Shirley transferred, during her  
9 lifetime, assets to her trust. You heard that  
10 as well. Plus, I know nothing about what  
11 Simon did with his estate, and Simon, he may  
12 have owned assets jointly and passed outside  
13 the estate. So the inventory is a narrow  
14 window of just that which passes through.  
15 There are people, and I'll say this to Eliot,  
16 we deal with this all the time, people  
17 sometimes are super rich and they don't even  
18 have a probate estate, because everything is  
19 titled jointly, or they fund the trust in  
20 advance, and there is no probate. People  
21 don't like to have probate. So that very well  
22 is what happened, but I'm willing to at least  
23 start. I want you to put on your client and  
24 take some testimony, because we had accuracy  
25 issues, Mr. Manceri, on the accuracy of the

1 inventory, and then to state on the record  
2 what he knows about, that he's done a search  
3 for other assets but personalty, and there's  
4 nothing else that Shirley had in her probate  
5 estate to be poured over into her trust. That  
6 is what you were told.

7 MR. MANCERI: Your Honor, I like to put on  
8 two people.

9 THE COURT: You might want that, but I tell  
10 you what I want. I want the PR to do that  
11 first, and then we see.

12 MR. MANCERI: Judge, I wasn't prepared to  
13 address the inventory. I don't have a copy of  
14 the inventory at my disposal. If anybody has  
15 a copy, I'll be glad to use that. Just to be  
16 clear, Ted was not the PR at the time this  
17 inventory was filed.

18 THE COURT: But he's in charge of the  
19 estate once he takes it over.

20 MR. MANCERI: He just got appointed a  
21 couple of weeks ago, but yes.

22 THE COURT: He'll address it, otherwise I  
23 have to give him more time to do his work and  
24 not close the estate. You want the estate  
25 closed; right?

1           MR. MANCERI: We want to address what the  
2           court order said. We don't have a petition of  
3           discharge filed.

4           THE COURT: You want to file one to close  
5           the estate.

6           MR. MANCERI: Eventually, yes.

7           THE COURT: Come on up Ted.

8           MR. MANCERI: Mr. Bernstein, please.  
9           Judge, I'm still waiting for the inventory.

10          THE COURT: He'll give it to you. Do you  
11          have it? I mean, I have it. Do you have it  
12          Mr. Pratt?

13          MR. PRATT: I don't think so.

14          (A brief pause.)

15          THE COURT: Hold on. I'll get you a copy.

16          (A brief pause.)

17          THE COURT: I have a question, Mr. Manceri.  
18          I want to make sure of one thing, the  
19          inventory was signed by Simon on August 29,  
20          2011. When did he die?

21          MR. MANCERI: Simon died a little more than  
22          a year ago.

23          THE COURT: He was alive then.

24          MR. MANCERI: Yes, sir.

25          THE COURT: All right.



1                   MR. MANCERI: I think September, 2012 he  
2                   died --

3                   THE COURT: All right.

4                   MR. MANCERI: -- if my memory serves me  
5                   correctly. And Mrs. Bernstein died the prior  
6                   December. 2010, forgive me.

7                   THE COURT: There is a petition for  
8                   discharge on file.

9                   MR. MANCERI: That's the original petition.  
10                  That was probably for Simon. Now we have to  
11                  do one for Ted, Your Honor.

12                  THE COURT: All right.

13                  Whereupon Mr. Ted Bernstein was sworn in by  
14                  The Court.)

15                                 DIRECT EXAMINATION

16         BY MR. MANCERI:

17                 Q. State your name for the record, please.

18                 A. Ted Bernstein.

19                 Q. Mr. Bernstein, are you one of the children of  
20         Shirley and Simon Bernstein?

21                 A. Yes. I am.

22                 Q. Do you have any siblings?

23                 A. Yes. I do.

24                 Q. What are their names?

25                 A. Pam, Simon, Eliot Bernstein, Jill and Lisa.

1 Q. Are you aware of the fact that your father,  
2 Simon, was the named personal representative of your  
3 mother, Shirley's estate?

4 A. I am, yes.

5 Q. Did you have hands-on working participation as  
6 far as the administration of your mother's estate, with  
7 your father?

8 A. Did not.

9 Q. I'm going to show you a document which the court  
10 bailiff has given us, which is entitled, "Inventory."  
11 Are you familiar with your father's signature?

12 A. I am.

13 Q. Take a look at this document on page two, and  
14 tell me if that's your father's signature, to the best  
15 of your knowledge.

16 A. Yes. It is.

17 Q. Are you familiar with a gentleman named Robert  
18 Spallina?

19 A. Yes.

20 Q. How do you know that name, and how is it familiar  
21 to you?

22 A. He is the personal representative of my father's  
23 estate.

24 Q. Do you know whether or not he was one of the  
25 attorneys that handled the administration of your

1 mother's estate?

2 A. I believe he was, yes.

3 Q. This inventory reflects, and these are assets  
4 that would be in your mother's individual name, not in  
5 her trust, not in her joint name, not with a beneficiary  
6 named on them, of an estimated value of \$25,000  
7 described as furniture, furnishings, household goods and  
8 personal effects, do you see that?

9 A. I see that.

10 Q. Do you have any personal knowledge as to the  
11 accuracy of the information here as signed under  
12 penalties of perjury by your father?

13 A. I think that my personal knowledge is that would  
14 be accurate.

15 Q. Do you have any information of your personal  
16 knowledge that you acquired or knew about from the time  
17 prior to you becoming appointed personal representative  
18 of your mother's estate, or since you became personal  
19 representative of your mother's estate, that would  
20 materially change this \$25,000 figure?

21 A. I do not.

22 MR. MANCERI: I don't have any further  
23 questions, Your Honor.

24 THE COURT: Mr. Pratt.

25

CROSS EXAMINATION

BY MR. PRATT:

Q. You didn't prepare this inventory; did you?

A. I did not.

Q. You weren't involved in the preparation, at all?

A. I was not.

Q. Do you have -- you were only appointed as --  
strike that. Have you even been appointed as personal  
representative of your mother's estate yet?

A. Of my mother's estate?

Q. Yes.

A. I believe that I have.

Q. Do you know if the letters of administration have  
actually been issued?

A. I do not know that.

Q. You haven't seen any letters of administration?

A. I'm not sure right now.

Q. Since your appointment, or there was an order  
that was entered, what efforts have you made to  
determine the value of your mother's estate?

A. Of my mother's estate?

Q. Exactly.

A. I have not done that.

Q. On what basis, if you haven't done any  
investigation yourself, why would you say that this

1     \$25,000 estimate of the value of the estate is accurate?

2           A.   Well, upon my father's death I had to have the  
3   assets of the estate inventory that was done, so that  
4   was the combination of my mother's estate and my  
5   father's, at the time of his death.  So based on that  
6   valuation at that time, that number was within reason of  
7   this number, so I think that we're talking within  
8   generalities the numbers are approximates and were  
9   pretty close to the numbers that were stated here.

10          Q.   You're not serving as personal representative of  
11   your father's estate; are you?

12          A.   I am not.

13          Q.   You're just talking about the \$25,000 value of  
14   the household furnishings, and not whether or not  
15   there's any other assets out there; is that right?

16          A.   That's correct.

17                   THE COURT:   He was appointed September 24th  
18                   by the way.

19                   MR. PRATT:   Okay.

20                   THE COURT:   2013.

21                   MR. PRATT:   I have no further questions.

22                   THE COURT:   You can step down.

23                   THE WITNESS:  Thanks.

24                   THE COURT:   You said you want to call  
25                   another witness?

1                   MR. MANCERI: I like to call Mr. Spallina,  
2                   Your Honor.

3                   THE COURT: Come up.

4                   (Whereupon Mr. Spallina was sworn in by the  
5                   Court.)

6                   DIRECT EXAMINATION

7 BY MR. MANCERI:

8           Q. Mr. Spallina, good afternoon. As you heard,  
9 we've been asking questions about this inventory; are  
10 you familiar with this document?

11          A. Yes. I am.

12          Q. Tell the Court how you're familiar with it.

13          A. This was the inventory that we filed in the  
14 Shirley Bernstein estate, Your Honor.

15          Q. Were you one of the attorneys that represented  
16 Simon as personal representative of the Estate of  
17 Shirley Bernstein?

18          A. Yes. I was.

19          Q. And did you work with Simon Bernstein on creating  
20 this inventory to be filed in the probate court?

21          A. Yes. I did.

22          Q. All right. Did you meet and speak with Simon in  
23 furtherance of the preparation of this document?

24          A. Yes. We did.

25          Q. And that inventory reflects an estimated value of

1     \$25,000 comprised of furniture, furnishings, household  
2     goods, and personal effects, do you see that?

3         A.   Yes.

4         Q.   Based on your dealings with Simon Bernstein, do  
5     you have any information or knowledge which would in any  
6     way contradict the value that's reflected on that  
7     inventory?

8         A.   No.   I do not.

9         Q.   Have you come to learn in the furtherance of the  
10    administration of the estate of Simon Bernstein, because  
11    you were one of the co-PR's of that estate; correct?

12        A.   Yes.

13        Q.   Is there any information that you learned in  
14    furtherance of being the personal representative of  
15    Simon's estate that the \$25,000 figure on this inventory  
16    is inaccurate?

17        A.   No.   I have not.   This was a reasonable estimate  
18    of the estate.

19        Q.   Now, did you or your firm handle the preparation  
20    of the estate planning documents for Shirley Bernstein?

21        A.   Yes.   We did.

22        Q.   And one of the documents we heard that Shirley  
23    Bernstein had was what I'm going to call the Shirley  
24    Bernstein trust.   Do you know what I'm referring to?

25        A.   Yes.

1 Q. Did you work with Shirley Bernstein in  
2 furtherance of funding that trust while she was alive?

3 A. Yes. We did.

4 Q. To your knowledge, other than the assets that are  
5 on this inventory, and excluding things that you know  
6 would not be included, such as joint property and those  
7 assets, were all of her material assets, to your  
8 knowledge, funded into her trust before she died?

9 A. As far as we know, yes.

10 MR. MANCERI: I don't have any further  
11 questions, Your Honor.

12 THE COURT: Mr. Pratt.

13 CROSS EXAMINATION

14 BY MR. PRATT:

15 Q. You said that you worked on preparing the  
16 inventory in Shirley Bernstein's estate?

17 A. Yes.

18 Q. Can you tell me was that something that you  
19 handled personally, or something that you delegated to  
20 an assistant?

21 A. I called Simon, personally.

22 Q. But was there any efforts you made to contact  
23 like say banks or third-parties to determine if there  
24 was any other assets?

25 A. When we had a discussion about what to put on the



1 inventory, yes, and he said this was all there was to  
2 put on the inventory.

3 Q. This inventory is based off of information that  
4 you were given by Simon?

5 A. Correct.

6 Q. You basically took his word for it and didn't do  
7 any investigation of your own; is that right?

8 A. That's correct.

9 MR. PRATT: I have no further questions.

10 THE COURT: So there's an inventory and you  
11 are the PR of Simon, one of them.

12 THE WITNESS: Yes.

13 THE COURT: What's the status of his  
14 estate?

15 THE WITNESS: His estate is pending.  
16 There's litigation ongoing in the estate. We  
17 have waited on distributing anything from the  
18 estate due to the pending litigation, Your  
19 Honor.

20 THE COURT: Okay. Did you file an  
21 inventory in Simon's estate?

22 THE WITNESS: Yes, sir.

23 THE COURT: Has the inventory been  
24 published?

25 THE WITNESS: I believe it has, Your Honor.

1           THE COURT: Do you have an inventory from  
2           Simon's estate?

3           MR. PRATT: No. We don't.

4           THE COURT: Do you object to them having  
5           it?

6           THE WITNESS: No.

7           THE COURT: Okay. I'm going to let you  
8           have it, Elliott. Thank you.

9           THE COURT: All right. Thank you. You can  
10          have a seat.

11          THE WITNESS: Thank you.

12          THE COURT: So technically the hearing  
13          today was to deal with the improprieties of  
14          the pleadings, meaning the prior waivers. I  
15          heard a lit about this last time. I know you  
16          brought in witness. Mr. Roth is here  
17          obviously because of Ms. Moran's potential  
18          difficuly, but I'm trying to think of putting  
19          substance ahead of form to determine how it  
20          benefits the estate to go into that issue any  
21          further. So do you have a position on that  
22          Mr. Pratt, now that Eliot has had a chance to  
23          have the benefit of counsel and you've seen  
24          the newest round of waivers. There is no  
25          petition filed yet by Ted Bernstein. If he

1 files one and the estate for some reason is  
2 not ready to be closed, or shouldn't be  
3 closed, we can deal with that at that time.

4 You know, sometimes things happen and the  
5 other side not having made a final decision on  
6 this, what I heard was not good about what I  
7 heard took place with respect to the  
8 processing of these documents, the waivers  
9 that the children signed and, essentially the  
10 one that was signed purportedly by Simon, but  
11 does it really matter, and I think I'd want it  
12 to matter before more time and money and  
13 energy is put into that, because if it's not  
14 going to put money into anybody's pocket, what  
15 good does it do just to tell Ms. Moran that  
16 she did a bad thing. If that's the case, I  
17 don't know that it is. I'm not finding that.

18 MR. PRATT: I'm not too concerned about the  
19 validity of the waivers now that they've  
20 signed new waivers and they filed them. What  
21 We're trying to accomplish here is not to  
22 throw anybody under the bus, or burn anybody.  
23 We want a clear picture of what happened in  
24 this entire estate plan, and the parent's  
25 died --

1           THE COURT: I've got that, but Elliott is  
2           entitled to that which anyone else in his  
3           position is entitled to, no more no less, so  
4           I'm not restricting, nor am I expanding on  
5           this concept. There's laws that govern that  
6           what he is entitled to. They're saying that,  
7           you know, he's -- I mean, I don't know that  
8           there's a formal request in Shirley's estate  
9           for any other documentation other than that  
10          which you now have, because there is nothing  
11          else that is filed, and if what Ted says and  
12          what Mr. Spallina says is true, if we  
13          requested a final accounting we would get the  
14          same things, and that's not going to get you  
15          anywhere. That's what they said.

16          MR. PRATT: My concern is that we're not  
17          going to be in a giant rush to close the  
18          estate, not that we want to turn this --

19          THE COURT: There's no petition to close it  
20          right now. Let's be patient and see what  
21          happens and there may be reasons not to, or to  
22          close it, depending what goes on elsewhere.  
23          But given that, I don't even know other than  
24          what we now see in the inventories, because  
25          those are the two official documents, I don't

1 know anything else about what monies may have  
2 passed through anyone's hands. But this isn't  
3 a case of first impression. The law deals  
4 with what potential beneficiaries are entitled  
5 to and what they're not, and what trustees can  
6 provide, and what not.

7 Let's be patient and do it in the correct  
8 forum. It seems like a lot, and what you want  
9 to accomplish is going to take place before  
10 Judge French, or if you can take it back to  
11 Judge Garrison.

12 MR. PRATT: Yea, I think you're right. We  
13 want to make sure that this piece of the  
14 puzzle is accurate, and if it is, you might  
15 not ever see us again.

16 THE COURT: So they say she funded the  
17 trust before her lifetime. Maybe she had some  
18 assets that were jointly titled. Those are  
19 not probate assets, they go just like people  
20 want. She may have cash under the pillow and  
21 it goes. So I'm going to take no further  
22 action right now on the issue of alleged  
23 impropriety or defects in the form of a  
24 pleading or other documents submitted to the  
25 court in furtherance of the closing of the

1 estate of Shirley Bernstein. I'm going to  
2 reserve on attorney's fees and any other  
3 possible sanction, if and when that matter  
4 becoming ripe for me to determine, but not  
5 today.

6 MR. MANCERI: Your Honor.

7 THE COURT: It may not Happen, at all.

8 MR. MANCERI: I want to address one thing  
9 that you mentioned, so everyone knows. We  
10 intend on filing a petition to close this  
11 estate very quickly.

12 THE COURT: But I can't preempt that and  
13 deal with that. We have to be patient and  
14 follow the rule. When you file it, you're  
15 going to make sure Elliott gets served. You  
16 serve him, and he can do whatever he wants  
17 with it. This is all rule driven.

18 MR. MANCERI: No question about it, Your  
19 Honor. We have the original waivers. As you  
20 know, we don't file the one's in ink anymore.  
21 We have them if you want to take them in open  
22 court.

23 THE COURT: No. E-files are good. You're  
24 allowed to e-file.

25 MR. MANCERI: We'll rest with that. We

1 have a record.

2 THE COURT: I don't get files, you can  
3 tell.

4 MR. MANCERI: We have them.

5 MR. ROTH: Can I just address the Court,  
6 Judge, just to save some time in the future?

7 THE COURT: Sure.

8 MR. ROTH: I represent Kimberly Moran. She  
9 has been charged by the state attorney's  
10 office in a direct information with  
11 improprieties regarding the notarization.  
12 She's fully cooperated with the sheriff's  
13 office. Just so you know so there's no  
14 mystery here, she caused to be filed the  
15 original waivers, which did not have a  
16 notarization. This is pursuant to her  
17 statement to the sheriff's office, it was her  
18 understanding they did not need to be  
19 notarized. Apparently Your Honor requires  
20 them to be notarized. In order not to "get in  
21 trouble" with Mr. Spallina and Mr. Tescher for  
22 improperly filing unsworn and un-notarized  
23 waivers, she stated to the sheriff's office  
24 that she did that. She recognized what she  
25 did was wrong. We surrendered her to the Palm

1 Beach Sheriff's office jail on Friday. If she  
2 was called as a witness in this proceeding,  
3 she would respectfully evoke her 5th Amendment  
4 privilege.

5 THE COURT: That's one reason I had her to  
6 stay outside and tried not to bring her in,  
7 because we don't cross over things between  
8 criminal and probate, and we were going to  
9 leave it to another time and place.

10 MR. ROTH: She's a secretary that made a  
11 poor choice of judgment apparently, based upon  
12 what I've been told by the state attorney's  
13 office and the detective that investigated the  
14 case. I wanted you to be aware of that. It  
15 would be a waste of time for her to subpoenaed  
16 again, because she would evoke her privilege.

17 THE COURT: Okay. Mr. Pratt, I don't think  
18 there's any doubt she's not going to testify  
19 that she's here pursuant to a request to do  
20 that. She has a 5th Amendment right and we're  
21 going to stick to that. I don't know that  
22 would benefit you anyway.

23 MR. PRATT: If she were to plead the 5th,  
24 we could draw whatever conclusions we want to  
25 from that. The ramifications of that, not



1           that I plan to subpoena her in the future, or  
2           that I intend to question her about that, but  
3           if she pleads the 5th in a civil case, then we  
4           can draw whenever conclusions we want to  
5           from --

6           THE COURT: You can draw adverse inferences  
7           from her, but she's nobody. It's not going to  
8           get you anywhere. Yes, I'll draw an adverse  
9           inference, but then it gets you zero.

10          MR. PRATT: There's other ways to get it  
11          in.

12          THE COURT: I don't think there's any doubt  
13          about what happened. I'm aware of it. I just  
14          don't like to make more trouble for people  
15          that --

16          MR. PRATT: I don't intend to.

17          THE COURT: It's not warranted. I didn't  
18          know she was charged. There's obviously  
19          consequences that she's now charged with a  
20          crime. So dealing with all that sounds to be  
21          enough, so let's leave that barking dog alone  
22          for right now and see where it gets everybody.  
23          It reaffirms my internal position that I made  
24          along with my case manager to require waivers  
25          to be notarized. This will be the case

1           example, that bench bar, as to why it will  
2           stay that way. We did it for a reason, not  
3           with this case in mind, but it's important  
4           now. We changed that rule soon after I got on  
5           the bench here in probate, and this isn't the  
6           only case where we had a problem with waivers  
7           and challenges later on, so it's a good idea  
8           to keep on doing that. No we just need to  
9           make sure we notarize them correctly, but I  
10          don't think that would be a problem.

11                 Prepare the order that I indicated and  
12          we'll be done for today. Thank you everyone.

13                         (Whereupon the Hearing was concluded at  
14                         5:13 p.m.)

C-E-R-T-I-F-I-C-A-T-E

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

I, the undersigned authority, certify that the  
above Hearing was taken by me stenographically, and is a  
true and accurate transcription of my stenographic  
notes. Witness my hand and official seal this 6th day  
of December, 2013.

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Michael Todd Berkowitz  
Notary Public - State of Florida