

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

IN RE: ESTATE OF

Case Number: 502012CP004391XXXXSB

SIMON L. BERNSTEIN

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**PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST,  
FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING**

Petitioner, ELIOT IVAN BERNSTEIN, individually and on behalf of his minor children ("Petitioner"), who are alleged qualified beneficiaries of the testamentary trust ("Settlor's Trust")<sup>1</sup> that is the alleged residuary beneficiary of the Estate of Simon L. Bernstein (the "Estate"), hereby petitions this Court for the construction of Settlor's Trust as permitted by Section 736.0201(5) of the Florida Statutes, for the removal of TED S. BERNSTEIN ("Ted"), as purported trustee of the Trust, and for a trust accounting with respect to Settlor's Trust, and in support thereof, Petitioner alleges as follows:

1. SIMON L. BERNSTEIN ("Settlor") is the decedent of this Estate.
2. The alleged Will of Settlor dated July 25, 2012 ("Settlor's Will")<sup>2</sup> was admitted to probate in this proceeding<sup>3</sup>.
3. The alleged 2012 Settlor's Will, allegedly executed weeks before Settlor's death has been challenged by Petitioner, as well as, the alleged 2012 Amended and Restated Trust of Settlor. Petitioner has challenged these documents both civilly and criminally, along with other

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<sup>1</sup> Settlor's Trust is known as the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. A copy of Settlor's Trust is at URL [www.iviewit.tv/Simon and Shirley Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf) and is hereby incorporated in entirety by reference herein.

<sup>2</sup> A copy of Settlor's alleged July 25, 2012 Will is at the URL [www.iviewit.tv/Simon and Shirley Estate/20120725WillSimonBernstein.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120725WillSimonBernstein.pdf) attached hereto as Exhibit "B" and is hereby incorporated by reference herein.

<sup>3</sup> Petitioner in May of 2013 contested both the 2012 alleged Settlor's Will and an alleged 2012 Amended and Restated Trust of Settlor in Petitions to this Court that remain unheard. Petitioner and other beneficiaries have never been given the prior 2008 Will of Settlor and the 2008 Trust of Settlor as required by Florida Probate Rules and Statutes by the former Personal Representatives despite repeated demands by Petitioner and Petitioner's former counsel.

documents allegedly executed in 2012 by Settlor and claims they are part of a Fraud to change beneficiaries of Settlor's Estate and his wife Shirley Bernstein's ("Shirley") Estate from three of five of Settlor's children to Settlor's ten grandchildren and illegally seize Dominion and Control of the Estate to further loot Estate and Trust assets. Evidence of Fraud and Forgery has already been discovered and proven in the Estates and Trusts of Settlor and Shirley and Ted and other Respondents and others are subjects of ongoing state and federal civil and criminal investigations and actions.

4. That Petitioner will however argue forward in this Petition in the alternative, assuming that the documents are valid, while granting no validity to them until the court can determine the ultimate beneficiaries after forensic document analysis can be completed and all Estate and Trust documents turned over to the beneficiaries and interested parties as required by Probate Rules and Statutes.

5. By Article III of alleged 2012 Settlor's Will, upon Settlor's death, Settlor directed that his residuary estate be distributed to the then serving trustee of Settlor's Trust. Thus, Settlor's Trust is a testamentary trust that is the residuary beneficiary of the Estate.

6. Upon Settlor's death, Settlor's Florida counsel, DONALD R. TESCHER ("Tescher") and ROBERT L. SPALLINA ("Spallina") of the law firm of Tescher & Spallina, P.A., accepted their alleged roles as the designated successor co-trustees of Settlor's Trust.

7. Tescher and Spallina were also appointed as and served as the initial co-personal representatives of the Estate.

8. Tescher & Spallina, P.A. and Spallina also acted as their own counsel to themselves as co-personal representatives and co-trustees.

9. In the wake of certain unethical, egregious and potentially criminal conduct perpetrated by Tescher and Spallina (some of which conduct is explained more fully below and in Petitioner's prior unheard Petitions and Motions before this Court), Tescher and Spallina resigned as co-trustees of Settlor's Trust, as co-personal representatives of Settlor's estate and as counsel in all capacities, as exhibited in Tescher and Spallina's Resignation Letter at the URL @ <http://www.iviewit.tv/20140114%20Tescher%20and%20Spallina%20Resignation%20Letter%20as%20PR%20in%20estates%20of%20Simon%20and%20Shirley.pdf>, fully incorporated by reference herein and Tescher and Spallina's Withdrawal as Counsel and Personal Representatives Orders @ <http://www.iviewit.tv/20140218SignedOrdersDischargeTescherSpallinaRejectionTedSuccessor.pdf>, fully incorporated by reference herein.

10. The alleged 2012 Settlor's Trust does not designate a successor trustee in the event that Tescher and Spallina cease to serve, but it does provide under Subparagraph C.3 of Article IV that the last serving trustee may appoint his or her successor.

11. Based upon information and belief, upon their resignation, Tescher and/or Spallina purported to appoint Ted as successor trustee of Settlor's Trust. Thus, Petitioner believes that Ted is currently serving as the purported trustee of Settlor's Trust, although no formal notice or other evidence of his appointment has been provided to the beneficiaries as proscribed by Probate Rules and Statutes.

12. Subparagraph E.1 of Article III of Settlor's Trust provides, in relevant part, as follows:

"Notwithstanding the foregoing, **for all purposes of [Settlor's] Trust** and the dispositions made hereunder, [Settlor's] children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT

BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, **shall be deemed to have predeceased** [Settlor] . . ."

13. It is a well-established rule of will/trust construction that the intent of the testator/settlor must govern and be given full force and effect to the extent possible when it does not violate law or public policy. See, e.g., *First Union National Bank of Florida, N.A., as trustee v. Frumkin, et. al.*, 659 So. 2d 463 (Fla. 3d DCA 1995).

14. Settlor's alleged intent in Subparagraph E.1 of Settlor's Trust is clear and unambiguous: Settlor allegedly intended that his children, including Ted, **shall** be treated as if they predeceased Settlor for **all purposes** of Settlor's Trust. As Settlor allegedly intended for Ted to be treated as having predeceased him for all purposes of Settlor's Trust, Ted cannot serve as successor trustee of Settlor's Trust due to this and other conflicts. Thus, the purported appointment of Ted as successor trustee is void and Ted must be removed as purported trustee.

15. In addition to Ted being prohibited under the trust terms from serving as successor trustee of Settlor's Trust, Ted should be removed as purported trustee of Settlor's Trust for the following reasons:

(a) Ted has failed to keep the qualified beneficiaries of Settlor's Trust reasonably informed of Settlor's Trust and its administration despite reasonable requests for information from Petitioner, in violation of Section 736.0813 of the Florida Statutes.

(b) As explained more fully below, Ted has failed to administer Settlor's Trust in good faith and solely in the interests of the beneficiaries of Settlor's Trust by depriving certain beneficiaries of Settlor's Trust of certain assets to which they are entitled and by allowing such assets to instead be distributed to trusts for Ted's children created under Settlor's Trust, which conduct violates Sections 736.0801 and 736.0802 of the Florida Statutes:

(i) Ted is currently serving as trustee of the testamentary trust of his mother, SHIRLEY BERNSTEIN ("Shirley"). Shirley's testamentary trust is known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust"). A copy of Shirley's Trust is found at the URL [www.iviewit.tv/Simon and Shirley Estate/Simon and Shirley Trusts.pdf](http://www.iviewit.tv/Simon_and_Shirley_Estate/Simon_and_Shirley_Trusts.pdf) (pages 26-56) and is hereby incorporated by reference herein.

(ii) Two separate trusts were created under Shirley's Trust upon her death: the Family Trust and the Marital Trust. By Subparagraph E.1 of Article II of Shirley's Trust, Settlor was granted a limited testamentary power of appointment over the remaining assets of the Family Trust and Marital Trust at Settlor's death. Said power of appointment was exercisable in favor of Shirley's lineal descendants and their spouses; provided, however, that by Subparagraph E.1 of Article III of Shirley's Trust, Shirley specifically provided that Ted and his lineal descendants and PAMELA B. SIMON ("Pam", who is Shirley's daughter) and her lineal descendants **shall** be treated as if they predeceased the survivor of Shirley and Settlor (i.e., Settlor as he survived Shirley).

“Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.”

(iii) Thus, by the express terms of Shirley's Trust, Ted, the lineal descendants of Ted, Pam and the lineal descendants of Pam are considered to have predeceased

Settlor. Therefore, no assets of Shirley's Trust are permitted to be distributed to Ted, Pam or their respective lineal descendants.

(iv) On or about November 18, 2008, Shirley allegedly executed an alleged First Amendment to Shirley's Trust, by which she deleted a specific gift to Ted's stepson, MATTHEW LOGAN under Subparagraph B of Article II of Shirley's Trust.

(v) Spallina admitted to investigators at Palm Beach County Sheriff that, after Shirley's death, he **altered** the First Amendment to Shirley's Trust dated November 18, 2008 before sending it to Petitioner's prior counsel. Specifically, Spallina admits that he inserted paragraph 2 of the Purported Second First Amendment such that only Ted and Pam, and **not** their respective children, would be treated as having predeceased the survivor of Settlor and Shirley. *See* page 5 of that certain Offense Report dated January 23, 2014 by Detective Ryan W. Miller, a copy of is located at the URL [www.iviewit.tv/Sheriff\\_Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) and is hereby incorporated by reference herein ("Spallina's Police Report"). A copy of the purported Second First Amendment to Shirley's Trust that was provided to Petitioner's prior counsel is located at the URL <http://www.iviewit.tv/FIRST%20AMENDMENT%20TO%20SHIRLEY%20BERNSTEIN%20TRUST%20AGREEMENT.pdf> and is hereby incorporated by reference herein (the "Purported Second First Amendment to Shirley's Trust"). The Purported First Amendment to Shirley's Trust has not been provided to beneficiaries and interested parties since Shirley passed away on December 08, 2010 in violation of Probate Rules and Statutes. By Article II of Settlor's alleged 2012 Will, Settlor allegedly exercised the power of appointment granted to him under Shirley's Trust in favor of his grandchildren from all five children who survived him. Specifically, Settlor's alleged Will directs all remaining assets of the Marital Trust and the Family Trust

created under Shirley's Trust to be divided into equal shares for Settlor's grandchildren who survived him, and that each grandchild's share be distributed to the separate trust created for him or her under Settlor's Trust.

(vi) Notwithstanding that the true version of Shirley's Trust (i.e., Shirley's Trust as amended by the First Amendment but without the alleged alteration by Spallina) precludes any distributions to Ted's lineal descendants and Pam's lineal descendants, Ted, as alleged trustee of Shirley's Trust, distributed an equal share of the remaining assets of Shirley's Trust to the trusts created under Settlor's Trust for Ted's lineal descendants and Pam's lineal descendants breaching his alleged fiduciary duties and creating conflicts that preclude and any further involvement of Ted.

(vii) Ted alleges that Spallina instructed him to distribute a portion of the remaining assets of Shirley's Trust to the trusts for Ted's children and Pam's children created under Settlor's Trust. Ted further alleges that Tescher and Spallina advised him on how to set up such trust accounts to receive such assets. *See* pages 2-3 of that certain Offense Report dated January 29, 2014 by Detective Ryan W. Miller, a copy located at the URL [www.iviewit.tv/Sheriff\\_Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) and is hereby incorporated by reference herein ("Ted's Police Report").

(viii) Ted further alleges that acting as alleged Trustee he "did not read all of Shirley's Trust documents and that Spallina and Tescher had both told him several times how Shirley's Trust was to be distributed." *See* page 2 of Ted's Police Report.

(ix) Conversely, Spallina alleges that "[Ted] was told not to make [the] distributions [from Shirley's Trust to the trusts for Settlor's grandchildren created under Settlor's Trust]." *See* page 6 of Spallina's Police Report. Indeed, Spallina admits that "all [Settlor] can do

with Shirley's Trust is give it to Lisa, Jill, and [Petitioner's] children." See page 3 of Spallina's Police Report.

(x) Ted colluded with Tescher and Spallina to allow a portion of the assets of Shirley's Trust to be distributed to the trusts created for his and his sister Pamela's children under Settlor's Trust, in violation of his duty to administer Settlor's Trust in good faith and solely in the interests of the beneficiaries of Settlor's Trust. Said conduct by Ted as purported trustee of Settlor's Trust has deprived Petitioner's children and other beneficiaries of Settlor's Trust of certain assets of Shirley's Trust to which they are entitled and has caused and continues to cause irreparable harms.

(c) Tescher and Spallina therefore should be prohibited from appointing the successor trustee of Settlor's Trust in light of their conduct more specifically described above in knowingly and with intent to defraud fabricating the Purported Second First Amendment to Shirley's Trust, for closing the Estate of Shirley with a deceased Personal Representative (Settlor) and for their part in Fraudulent Notarizations and Forgery of six signatures, including a forged document for Settlor Post Mortem and therefore Ted should be removed as purported trustee since he is believed to have been appointed by Tescher and Spallina and to have colluded with them in egregious acts of bad faith, leaving them all with unclean hands. Further, Ted has conflicts in that he has a strong business and personal relationship with both Tescher and Spallina and was in fact the person who brought them to his father to attempt to have him make changes to the Estates and Trusts of Settlor and Shirley and has expressed anger at Petitioner for exposing the criminal acts in the Estates and Trusts committed by his close personal friends, Tescher and Spallina, further prejudicing Ted against Petitioner and other beneficiaries.



(d) Ted's actions more specifically described above demonstrate multiple conflicts of interest and egregious acts of bad faith that warrant his removal as purported trustee of Settlor's Trust.

(e) Petitioner is prepared to offer additional grounds for the removal of Ted as purported trustee of Settlor's Trust upon the Court's request. However, Petitioner believes that a proper construction of Settlor's Trust and the grounds set forth above are sufficient to warrant Ted's removal and prohibited from further involvement in Settlor's Trust.

16. Petitioner requests that Tescher and Spallina, as the initial alleged successor trustees of Settlor's Trust, and Ted, as the current purported successor trustee of Settlor's Trust, serve a full and complete trust accounting with respect to Settlor's Trust on all alleged qualified beneficiaries of Settlor's Trust that covers the periods of their respective service.

WHEREFORE, Petitioner respectfully requests that this Court enter an Order:

(i) removing Ted as purported trustee of Settlor's Trust based on Settlor's clear intent as expressed in Settlor's Trust and/or based on the serious breaches of trust described above committed by Ted as purported trustee;

(ii) requiring Tescher, Spallina and Ted to provide a full and complete trust accounting to each qualified beneficiary of the Trust that covers their respective periods of service; and

(iii) granting such other and further relief as the Court deems just and proper.

Signed on \_\_\_\_\_, 2014.

Respectfully submitted,

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By: ELIOT BERNSTEIN, on behalf of his minor  
children, who are qualified beneficiaries of Settlor's  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petition was served via electronic mail on April \_\_\_\_\_, 2014 to: (i) Alan Rose, Esq., counsel for Ted S. Bernstein, [arose@mrachek-law.com](mailto:arose@mrachek-law.com); (ii) Benjamin Brown, Esq., curator of the Estate of Simon L. Bernstein, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com); (iii) Peter Feaman, Esq., counsel for William E. Stansbury, as a creditor of the Estate, [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com); and (iv) \_\_\_\_\_, Esq., counsel for \_\_\_\_\_, beneficiaries of the Estate of Simon Bernstein.

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Eliot Bernstein, Pro Se Petitioner

Exhibit "A"

Settlor's Trust

Exhibit "B"

Settlor's Will

Exhibit "C"

Shirley's Trust

Exhibit "D"

Spallina's Police Report

Exhibit "E"

Purported First Amendment to Shirley's Trust



Exhibit "F"

Ted's Police Report