

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 502014CP002815XXXXSB

OPPENHEIMER TRUST COMPANY
OF DELAWARE, IN ITS CAPACITY
AS RESIGNED TRUSTEE OF THE
SIMON BERNSTEIN IRREVOCABLE
TRUSTS CREATED FOR THE BENEFIT
OF JOSHUA, JAKE AND DANIEL
BERNSTEIN,

HON. JEFFREY DANA GILLEN
**TRANSFERRED TO HON. MARTIN
COLIN**

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN,
IN THEIR CAPACITY AS PARENTS AND
NATURAL GUARDIANS OF JOSHUA,
JAKE AND DANIEL BERNSTEIN, MINORS,

Respondents,

ANSWER

COMES NOW, Eliot Ivan Bernstein (“Eliot”) and Candice Michelle Bernstein (“Candice”), both PRO SE, Eliot as Beneficiary and Interested Party both for himself personally and with Candice as Guardians for their three minor children (“Petitioners”) and hereby files this “ANSWER AND COUNTER COMPLAINT” and in support thereof states, as follows:

ANSWER



ANSWER

Wednesday, July 30, 2014

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1. This is an action pursuant to Fla. Stat. § 736.0201 for (i) instructions regarding the delivery of trust property upon the sole trustee's resignation; (ii) approval of the resigned trustee's final accounting; and (iii) release and discharge of the resigned trustee.

ANSWER – Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

2. Petitioner, Oppenheimer Trust Company of Delaware ("Oppenheimer"), is a Delaware corporation with its principal place of business in Wilmington, Delaware.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. Respondents, Eliot and Candice Bernstein, are the parents and natural guardians of minors, Joshua, Jake and Daniel Bernstein, and reside with them in Palm Beach County, Florida. Joshua, Jake and Daniel Bernstein are the sole beneficiaries under three in-evocable trusts (the "Trusts") created by their late grandfather, Simon Bernstein, on September 7, 2006. Copies of the Trusts are attached hereto as Exhibits "A" through "C."

ANSWER – Admit in part, deny in part. Admit Eliot and Candice are the parents and natural guardians of minors, Joshua, Jacob (not Jake as claimed as his legal name is Jacob) and Daniel Bernstein. Petitioners lack sufficient information and knowledge regarding the remainder to form a belief as to the truth of the allegations of this paragraph and therefore deny the same.

4. Jurisdiction and venue are proper in Palm Beach County, Florida because the beneficiaries of the Trusts reside here.

ANSWER – Admit in part, deny in part. Admit the beneficiaries reside in Florida. Petitioners lack sufficient information and knowledge regarding the remainder to form a belief as to the truth of the allegations of this paragraph and therefore deny the same.

5. Gerald R. Lewin was the initial trustee of the Trusts.

ANSWER - DENY

6. On September 5, 2007, Mr. Lewin resigned as trustee and appointed Stanford Trust Company as his successor pursuant to Section 5.3 of the Trusts.

ANSWER – DENY. Gerald Lewin was never the trustee of the children's trusts and was never appointed Stanford Trust Company as his successor pursuant to Section 5.3 of the Trusts.

7. By virtue of an April 23, 2009 Order entered by the United States District Court for the Northern District of Texas in the matter of SEC v. Stanford International Bank, Ltd., et. al., Case No. 3-09CV0298-N, Stanford Trust Company was deemed to have resigned or been removed as fiduciary for any and all fiduciary accounts, including the Trusts. A copy of that Order is attached hereto as Exhibit "D." Stanford Trust Company's resignation/removal left the Trusts without a trustee.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. In 2010, Eliot and Candice Bernstein, as the parents and natural guardians of Joshua, Jake and Daniel Bernstein, filed Petitions to Appoint Successor Trustee for each of the Trusts in the Circuit Court in and for Palm Beach County, Case Nos. 50201 OCP003123XXXX.SB, 50201 OCP003125XXXXSB and 50201 OCP003128XXXXSB.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. On July 8, 2010, the Palm Beach Probate Court entered Final Orders on Petition to Appoint Successor Trustee, appointing Oppenheimer as the successor trustee of each of the Trusts. Copies of those Orders and Oppenheimer's July 30, 2010 acceptance of the appointments are attached hereto as Composite Exhibits "E" through "G."

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. By letter dated April 22, 2014 (the "Notice of Resignation"), Oppenheimer resigned as trustee effective May 26, 2014. A copy of the Notice of Resignation is attached hereto as Exhibit "H."

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. In the Notice of Resignation, Oppenheimer advised Eliot and Candice Bernstein of their right and obligation to appoint a successor corporate trustee. To date, they have declined to do so.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

12. In addition to other relief requested herein, Oppenheimer requires instructions regarding the delivery of Trust assets in its possession to another trustee, or to Eliot and Candice Bernstein as the natural guardians of the beneficiaries.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

13. The Trusts provide, in relevant part, as follows:

5.2 Resignation. Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

5.3 Power to Name Other Trustees. Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settler ever be appointed as the Trustee

under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

14. Similarly, Fla. Stat. § 736.0705, entitled "Resignation of trustee," provides, in relevant part, as follows:

(1) A trustee may resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees...

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

15. Fla. Stat. § 736.0704, entitled "Vacancy in trusteeship; appointment of successor," provides, in relevant part, as follows:

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries.

(c) By a person appointed by the court.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

16. Finally, Fla. Stat. § 736.0707 requires a resigned trustee to deliver trust property to a successor trustee or other person entitled to the property, and provides that the resigned trustee has the duties of a trustee, and the power necessary to protect the trust property, until the property is so delivered.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

17. Oppenheimer reincorporates the allegations set forth in paragraphs 1 through 16.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

18. Oppenheimer, as the resigned trustee, is required to deliver the Trust property in its possession to a successor trustee or another authorized person.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

19. Because Candice and Eliot Bernstein, as the natural guardians of the beneficiaries, have failed to appoint a successor corporate trustee, the Court must either (i) appoint a successor trustee to whom Oppenheimer may deliver the Trust property or (ii) terminate the Trusts and permit Oppenheimer to deliver the Trust property to Eliot and Candice Bernstein, as the natural guardians of the Trusts' beneficiaries.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

20. Oppenheimer reincorporates the allegations set forth in paragraphs 1 through 16.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

21. Oppenheimer, as the resigned trustee of the Trusts, requests review, settlement and approval of its final accounting to be filed herein, and for an order releasing and discharging Oppenheimer from all claims arising out of or related to its service as trustee.

ANSWER - Petitioners lack sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

Filed on Wednesday, July 30, 2014

Eliot Bernstein, Pro Se, Individually and as
legal guardian on behalf of his three minor
children.

X

Candice Bernstein, Pro Se, as legal guardian
on behalf of her three minor children.

X

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the
foregoing has been furnished by email to all parties on the following Service List/Wednesday, July
30, 2014.

Eliot Bernstein, Pro Se, Individually and as
legal guardian on behalf of his three minor
children

X

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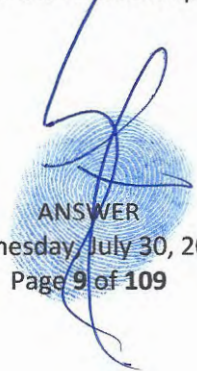
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