

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

Case No. 502014CP003698XXXXSB
Hon. Martin Colin

In Re:
SHIRLEY BERNSTEIN TRUST
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;
ELIOT IVAN BERNSTEIN in his capacity as
Natural Guardian of his
minor children, JOSHUA, JACOB and DANIEL;
and as beneficiary of the SHIRLEY
BERNSTEIN TRUST dated May 20, 2008, as
amended and ELIOT IVAN BERNSTEIN
as Trustee of the ELIOT BERNSTEIN FAMILY
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

TESCHER & SPALLINA, P.A., and all Partners,
Associates and of Counsel;
et al.

Counter Defendants.

I

PETITION TO REMOVE THEODORE STUART BERNSTEIN
AS SUCCESSOR TRUSTEE

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Counter Plaintiff"), beneficiary of the
Shirley Bernstein Trust Agreement, dated May 20, 2008 ("Exhibit A") and then as

FRAUDULENTLY AMENDED on an unknown date¹ (“Exhibit B”) and then again

FRAUDULENTLY AMENDED on November 08, 2008² (“Exhibit C”) (Exhibits A, B and C together herein the “Shirley Trust” or “Trust”) and Eliot Ivan Bernstein as Legal Guardian of his three minor children and pursuant to §736.0706, Fla. Stat. (2013) and any other applicable statutes, files this Petition To Remove Theodore Stuart Bernstein as Successor Trustee, and in support, on information and belief, states as follows:

1. Counter Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a beneficiary of the 2008 Shirley Trust.
2. Counter Plaintiff Eliot Ivan Bernstein is legal guardian of his three minor children, Joshua Bernstein, Jacob Bernstein and Daniel Bernstein, alleged beneficiaries of the Shirley Trust.
3. Counter Defendant, Theodore Stuart Bernstein ("Ted" or “TED”) is currently serving as the alleged Successor Trustee of the Shirley Trust and is a resident of Palm Beach County.

Legal Standard for Removal of Trustee

4. When removal of a trustee is at issue, §736.0706, Fla. Stat. (2014) governs:

736.0706. Removal of trustee

(2)The court may remove a trustee if:

- (a) The trustee has committed a serious breach of trust;
- (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;

¹ “Exhibit B” attached hereto is an alleged First Amendment to the Shirley Trust. The Court should note the lack of a dated on the first page. That the alleged Witness Attorney at Law Robert L. Spallina, Esq. (while representing Ted as alleged Successor Trustee) has admitted to Fraudulently Altering Shirley Trust documents to Palm Beach County Sheriff Investigators. The alleged Notary, Kimberly Moran, has been arrested and admitted to forgery and fraudulent notarizations of estate documents in these matters.

² “Exhibit C” attached hereto is an alleged SECOND First Amendment to the Shirley Trust. The Court should note that the alleged Witness Attorney at Law Robert L. Spallina, Esq. (while representing Ted as alleged Successor Trustee) has admitted to Fraudulently Altering this SECOND First Amendment. The fraudulent alteration inserted language to attempt to insert Ted’s family into the Shirley Trust for a one third interest, where without this fraudulent language Ted’s family receives no interest under the Shirley Trust, as Ted and his lineal descendants were considered predeceased in the alleged dispositive documents for all purposes of dispositions made thereunder.

(c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
(d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

5. TED's removal is warranted by Subsections (2) (a), (c) and/or (d) of §736.0706, Fla. Stat. (2014).
6. The previous Trustee of the 2008 Shirley Trust was Simon L. Bernstein.
7. By a letter dated January 14, 2014 addressed to the five children of Shirley Bernstein, as opposed to the beneficiaries of the Shirley Trust, only three of the five children of Shirley (Eliot, Lisa Friedstein and Jill Iantoni), the attorneys at law who were representing TED as counsel at the law firm Tescher & Spallina, P.A., both Donald R. Tescher, Esq. ("TESCHER") and Robert L. Spallina ("SPALLINA"), resigned in the Estates and Trusts of Shirley Bernstein ("Shirley") and Simon L. Bernstein ("Simon").
8. Their resignations and removal came due to their direct involvement in proven fraud on the court and fraud on the beneficiaries that directly benefited their legal client, business associate and friend TED, to the detriment of other beneficiaries.
9. The law firm of Tescher & Spallina, P.A. was representing Ted as alleged Successor Trustee of the Shirley Trust and Personal Representative of Shirley's Estate, while simultaneously the partners SPALLINA and TESCHER were acting as fiduciaries of the Estate and Trust of Simon as alleged Personal Representatives and Successor Trustees and then representing themselves as counsel for their role as fiduciaries.
10. That TESCHER and SPALLINA, after their law firm was implicated and admissions made of fraud, fraud on the Court, illegal alteration of Shirley Trust documents and more resigned and then were removed from the proceedings by Your Honor, in all of the following capacities, including but not limited to,

- i. Co-Trustees of Simon's 2012 trust,

- ii. Co-Personal Representatives/Executors to the Simon Estate,
- iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives of Simon's Estate and trusts,
- iv. Counsel to TED as alleged Trustee of the Shirley Trust,
- v. Counsel to TED as Personal Representative of the Shirley Estate, and,
- vi. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.

A copy of the resignation letter is attached hereto as Exhibit "D."³

11. That the frauds and other felony misconduct that has taken place in both the Estates and Trusts of both Simon and Shirley Bernstein committed by the Fiduciaries and their Attorneys at Law, all acting as Officers of this Court, are comingled between various bad faith acts committed across the Estates and Trusts of both Simon and Shirley and therefore the acts done by TED et al. in one instance should be sufficient for Ted's removal in any of the ongoing litigations where he is an alleged fiduciary.
12. TED's egregious acts of bad faith with unclean hands while acting as an alleged fiduciary in any of the ongoing litigations involving the Estates and Trusts of Simon and Shirley that he is implicated in are included in the Shirley Trust matters as parole evidence and as further cause for his removal in this particular Trust Construction lawsuit involving the Shirley Trust.
13. That TED should not have filed this pleading for a Trust Construction lawsuit involving the Shirley Trust as he is conflicted with the matters and beneficiaries, has adverse interests to beneficiaries and is implicated in ongoing civil and criminal, state and federal, legal actions involving both the estates and trusts of Simon and Shirley Bernstein and therefore cannot argue the matters impartially.

COUNT I

³ The Court should note that Tescher and Spallina on their way out the door amidst admitted frauds committed by their firm, partners and employee and ongoing investigations of further fraudulent acts, attempted to secretly pass the Trusteeship of Simon's Trust to TED, their client who they committed the frauds to benefit. This highly unethical and possibly criminal successorship has left TED as an alleged Successor Trustee as discussed further herein.

TED BERNSTEIN IS NOT ELIGIBLE TO SERVE AS SUCCESSOR TRUSTEE AS THE LANGUAGE OF THE TRUST DISQUALIFIES HIM TO SERVE AS SUCH

14. That SPALLINA admitted to Palm Beach County Sheriff Investigators to altering a Shirley Trust document to defraud beneficiaries, which benefited TED'S family. This fraud gave TED a 3/10th interest in the Shirley Trust whereas without the fraud TED'S family would receive zero, as TED and his lineal descendants were considered PREDECEASED in the language of the Shirley Trust.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. 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... (emphasis added)**

15. That it is alleged that since TED was considered "for purposes of the dispositions...predeceased" that he was fraudulently inserted into the COPIES of the Shirley Trust by TESCHER and SPALLINA, in order to illegally gain Dominion and Control of the Shirley Estate and Shirley Trust constituting a breach of trust and fraud to gain the fiducial role as Trustee for TED.

16. The alleged Shirley Trust was the basis used for TED to be appointed by the Court as Successor Personal Representative when the Court ReOpened the Estate of Shirley. The estate was illegally closed due to fraud on the beneficiaries, forgeries and fraud on the Court discovered and the fact

that Simon Bernstein closed the Estate while as acting Personal Representative while legally deceased for months, leaving the estate technically abandoned due to the fraud.

17. There was no proper successor chosen for Shirley's Estate after Simon passed away and for over a year there was none, until this Court appointed TED when reopening the Estate due to the illegal closing of the Estate of Shirley by the Fiduciaries and their counsel.
18. Beneficiaries have been denied repeated requests to inspect the original signed and executed Shirley and Simon Trusts and all Amendments, Codicil's, Addendums and Memorandums that were attached.
19. That TESCHER and SPALLINA did not turn over an original Shirley Trust or Simon Trust to Benjamin Brown, Esq. when Ordered to turn over their files upon their removal by this Court.
20. In light of the already proven fraud and forgeries committed with alleged dispositive documents by TED's former counsel, TESCHER and SPALLINA, in the Estate and Trusts of Shirley, the insertion of TED as a Successor Trustee and all other elements of the documents must be verified with forensic inspection of the originals for further inspection for fraud, alteration and forgery.
21. That TESCHER has stated in deposition that Simon and Shirley's Estates and Trusts were done on May 20, 2008 together and were mirrored to each other.
22. That a recently turned over copy of the 2008 Simon Trust that had been suppressed for almost two years was turned over to beneficiaries by this Court's Order upon TESCHER and SPALLINA's removal and Order for production of all of their records to the Curator, Benjamin Brown, Esq. upon his succession, revealed that Simon's Successor Trustee in the trust he did with Shirley while both were alive was William Stansbury (the Creditor to the Simon Estate), NOT TED as is alleged in Shirley's trust and this does not "mirror" the alleged Shirley Trust.

23. TED is considered predeceased for purposes of dispositions in both Simon and Shirley's Trusts making this insertion of TED as Successor Trustee either an egregious construction error that contradicts other language and intent of the Trust or further parole evidence of fraud.
24. TED has failed to administer the trust prudently by considering the purposes, terms and distribution requirements of the trust and has violated Florida Statute 736.0804.
25. That whether this Court decides that TED was a suitable successor trustee at any time and was not maliciously and illegally inserted into a COPY of the Shirley Trust, TED remains at this time not now qualified to be a successor trustee for all of the following additional reasons despite whether he is named or not, all making his removal mandatory at this time.

COUNT II

TED BERNSTEIN, AS SUCCESSOR TRUSTEE, HAS FAILED TO FOLLOW FLORIDA STATUTE 736.0813 AND 736.08135 BY BREACHING HIS DUTY TO INFORM AND ACCOUNT

26. The duty of a trustee to account has been codified in Florida Statute 736.0813:

736.0813 Duty to inform and account.---The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or **on change of the trustee.** (**emphasis supplied**)

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

27. TED has provided NO accountings for the estate of Shirley and the Simon and Shirley Trusts since he has become the alleged Successor Trustee.
28. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute. 736.0105(2) (s).

A. FAILURE TO ACCOUNT IN THE SIMON ESTATE AND TRUST

29. Ted, currently acting as successor trustee in the Simon Trust has provided NO accountings despite repeated requests by beneficiaries and despite a change in Successor Trustee, when TED's former counsel and fiduciaries for the 2012 Simon Trust, TESCHER and SPALLINA resigned after admitting their law firm committed Fraud, Fraudulent Notarizations, Forged documents and more that all were in efforts to benefit their friend and client TED and his family.
30. Between TED and his former counsel there has been NO accounting for over two years in the Simon trust in violation of probate and trust, rules and statutes.
31. That TESCHER and SPALLINA were ordered by the Court to produce a final accounting upon their removal and that accounting has been challenged by multiple parties, including the former Curator Benjamin Brown, Esq., the current Successor Personal Representative Brian O'Connell, the Creditor William Stansbury, Eliot and others on virtually every single line. The objections have been stayed with the case and remain unheard.

B. FAILURE TO ACCOUNT IN THE SHIRLEY ESTATE AND SHIRLEY BERNSTEIN TRUST

32. Since TED was appointed Personal Representative in the Shirley Bernstein Estate after the Estate of Shirley was reopened by this Court due to Fraud and Fraud on the Court committed by TED's counsel as PR, TESCHER and SPALLINA, NO statutorily required or required under the Shirley Trust accountings have been filed with the Court and/or provided beneficiaries.
33. Despite repeated requests and despite changes in fiduciaries when the Estate was reopened requiring accounting, none has been provided by Ted, in violation of probate and trust rules and statutes.
34. Since becoming the alleged Successor Trustee of Shirley's 2008 Shirley Bernstein Trust Agreement on September 13, 2012 Ted has failed to provide a full copy of Shirley's Trusts with all Schedules, Memorandums, Codicils, and Addendums as required by statute.
35. TED's failure to account leaves beneficiaries with no way to determine the Shirley Trust value.
36. A trustee cannot fulfill his duty to account by merely turning over to the beneficiaries the check register of the trust bank account, a list of checks, bank statements, copies of bills and receipts. It is the duty of the trustee to provide a proper and sufficient accounting. TED has failed to turn over to beneficiaries a register, list of checks, banks statements, copies of bills and receipts or any other verified accounting and financial information in the Estate and Trusts of Shirley.
37. TED's failure to account in the Shirley Estate, the Shirley trust and the Simon trust is cause alone for this Court to remove TED as a fiduciary of the Shirley Trust.

COUNT III

TED BERNSTEIN, AS ALLEGED SUCCESSOR TRUSTEE, HAS FAILED TO KEEP ACCURATE RECORDS AND COMMITTED WASTE, FRAUD AND ABUSES OF TRUST AND ESTATE ASSETS

38. TED as alleged successor trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust.

39. The Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

736.0810 Record keeping and identification of trust property.

(1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.

(2) A trustee shall keep trust property separate from the trustee's own property.

(3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

40. TESCHER and SPALLINA were ordered to turn over all their records and properties in their possession to the Curator, Benjamin Brown, Esq. No original signed and executed Trust for Simon and Shirley were turned over to him. TED does not possess the original signed and executed 2012 Simon Trust under which he alleges to operate as Successor Trustee.

41. At this time no original signed and legally executed originals exist of the 2012 Simon Trust.

42. The former fiduciaries of the Trust, TESCHER and SPALLINA, upon termination as Co-Trustees, have produced no original dispositive documents to the former Curator, Benjamin Brown, Esq., despite the Court's Order to turn over all records and properties in their possession to the former Curator.

43. The 2012 Simon trust was also used to seize dominion and control of the Shirley Trust assets through an alleged power of appointment exercised, where the Simon trust is challenged in entirety and already has been found to be improperly notarized.

44. Once control was gained by TED and his attorneys, TESCHER and SPALLINA, they began to loot Simon and Shirley's Trusts and Estates through a series of fraudulent acts and they began recklessly billing outrageous and unaccounted for legal and fiduciary fees, while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents. To date, several trusts are suppressed,

- claimed missing, life insurance policies and life insurance trusts are missing and claimed lost, IRA beneficiaries are claimed missing and more involving the estate plans of Simon and Shirley.
45. The Court should note that Simon Bernstein was one of the nation's leading innovative insurance salesman with over a billion dollars of sold premiums and was integral of estate planning for some of the nation's wealthiest families and would not have left his estate or his beloved wife's estates and trusts in this disorder. It is alleged that these acts to suppress and deny documents are all attempts to convert assets to improper parties by TED and his counsel.
46. Legal and fiduciary fees have run rampant, with often 6-7 attorneys attending hearings and all of this is cost is a result of TED and his former counsel SPALLINA and TESCHER'S and others involvement in fraud and other civil and criminal misconduct.
47. Real estate was sold at fire sale prices and distributions were made to knowingly improper parties by TED, against the advice of SPALLINA and against the express wishes of beneficiaries and their counsel.
48. Bank and other accounts were discovered being used post mortem at Legacy Bank and others. Bank accounts and investment accounts are alleged unaccounted for. IRA accounts are missing information regarding beneficiaries.
49. A trustee like TED who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, refuses to account for how the trust is being administered, and who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiaries and should be removed.
50. TED has failed to administer the Shirley Trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries in violation of Florida Statute 736.0801.

COUNT IV

TED BERNSTEIN SHOULD BE REMOVED AS SUCCESSOR TRUSTEE BASED ON CONFLICT OF INTEREST

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Thursday, November 20, 2014

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1) ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

51. At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust) as beneficiary.
52. Heritage claims however that the Primary Beneficiary was LaSalle National Trust, NA and the Contingent Beneficiary was the **Simon Bernstein Trust NA**.
53. SPALLINA also represented to Heritage that he was the Trustee of LaSalle National Trust NA, which he is not.
54. Shortly after SIMON'S death in 2012, SPALLINA submitted a claim form to Heritage on behalf of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995. SPALLINA signed the claim form as the "acting Trustee" of the nonexistent trust in an effort to make the insurance proceeds payable to his law firm trust account to then distribute the proceeds outside the Simon Bernstein Estate and Simon Bernstein Trust to the detriment of the Estate and Trust beneficiaries.
55. SPALLINA did this for the benefit of the grown children of Simon Bernstein (excluding Eliot), including TED, who as set forth above, was considered predeceased under the Simon's estate and Trust plans.
56. Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death, the insurance proceeds are payable to the Estate of Simon and then per the terms of Simon's Last Will and Testament, would pour over into Trust.
57. After SPALLINA'S claim was denied by Heritage, TED somehow replaced SPALLINA as the alleged "Trustee" of the lost trust and he filed an Illinois circuit court breach of contract lawsuit against Heritage for failure to pay the fraudulent claim submitted by SPALLINA. The suit was

transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago under the tutelage of Hon. Judge Amy St. Eve.

58. After TESCHER and SPALLINA resigned and were removed as Personal Representatives, the Estate of Simon Bernstein filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds. The Curator, Ben Brown, retained counsel with the approval of this Court to intercede on behalf of the Estate and SPALLINA and TESCHER refused to assert the Estates interest as they were acting as TED's counsel as Trustee of the Lost Trust simultaneously.
59. The Plaintiffs in the Life Insurance Litigation include TED acting as "Trustee" of the nonexistent 1995 trust and TED, individually. TED and the other Plaintiffs filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").
60. The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually,** PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN ... (**emphasis added**)

61. As Plaintiff, TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 and not their children.
62. Despite the opposition of TED BERNSTEIN and the other Plaintiffs to the Intervention, the federal court granted the Estate's Motion to Intervene.
63. TED is now an opposing party of record to the Estate's claim in the Illinois life insurance litigation.

64. TED, individually and as the alleged trustee of the legally nonexistent 1995 Simon Bernstein Irrevocable Insurance Trust, has placed his personal interests above the interests of the Simon Trust beneficiaries, allegedly the grandchildren of SIMON, including TED's own children.
65. Through TED's opposition to the Estate's intervention in the Illinois life insurance litigation, an inherent conflict of interest is displayed where TED is blocking the interests of beneficiaries of the Simon Trust, including his own children, while simultaneously acting as Trustee of the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 whereby he personally claims to have an interest in the policy.
66. TED, as alleged Successor Trustee of the Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the Simon trust beneficiaries to administer the trust solely in their interests. His actions in the Illinois Insurance Litigation have violated that duty.
67. TED, acting as a fiduciary to the Trust, must support, or at the least not obstruct, the efforts of the Estate and the Simon Trust to recover the additional \$1.7 million in life insurance benefits. However, TED benefits directly from his obstruction and therefore has an obvious conflict of interest.
68. If the insurance proceeds are recovered for the Estate, this would dramatically increase the Estate assets that Estate and Trust beneficiaries receive.
69. This attempt to redirect the insurance proceeds by TED and his former Counsel SPALLINA and TESCHER, through the lost insurance trust scheme have caused intentional interferences and delays with expectancies to the Simon Trust and Estate beneficiaries.
70. TED blocked the grandchildren, including minor children, from their interests being represented by counsel in the Illinois insurance litigation, leaving the grandchildren's interests wholly unprotected while trying to secure the benefits for himself.

71. The Federal court has now allowed intervention by the Estate of Simon Bernstein despite the best efforts to block the Estate's intervention by TED and his former Counsel SPALLINA and TESCHER.
72. The Court should note that SPALLINA and TESCHER had also blocked through Conflicts of Interest the Simon Estate and Simon Trust beneficiaries from asserting their interests in the policy while they were acting as PR and Trustees of Simon's Estate before their removal, acting instead to benefit their other client TED instead.
73. More importantly, TED and his former counsel's efforts in the Life Insurance Litigation are designed to keep the 1.7 million out of the estate and trust and to redirect the money to TED and his siblings (excluding Eliot).
74. As a consequence of the foregoing conflict of interest, TED is in breach of his fiduciary duty to the beneficiaries of the Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability. This warrants his removal under §736.0706(2)(a).
75. TED's continued interference is an attempt to redirect estate assets to himself personally and would further damage the trust beneficiaries, as Ted's interference has caused unnecessary and costly legal fees to the Estate and Trust beneficiaries.

B. TED'S CONFLICT OF INTEREST WITH BENEFICIARIES

i. TED'S ADVERSE INTEREST WITH ELIOT

76. TED has adverse interests to Eliot and in fact is hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their wrongdoings and exposed them to potential criminal prosecution.

77. TED and his attorneys have conspired to use a strategy of force and aggression on Eliot, which was discovered in an email TED sent to Eliot describing their tactics and stated on the record in a hearing before this Court by TED.

i. TED'S CONFLICT OF INTEREST HAS CAUSED HARM TO MINOR CHILDREN BENEFICIARIES

78. This Court ordered on August 20, 2014 and again on August 22, 2014, that tuition for Saint Andrews school, including past due balances, be paid for Eliot's three minor children for the 2014-2015 school year.

79. TED intentionally failed to make the Court-ordered payment, resulting in all three children being removed from school on the second day of school and forced them to attend new schools, causing major damages to the minor children both emotionally and scholastically. That these damages are both short term and long term, affecting their futures dramatically.

80. Because of the conflicts of interests and adverse interests with the beneficiaries, TED has failed to maintain a duty of impartiality owed to the beneficiaries and should therefore be removed.

81. Attorney SPALLINA, representing TED as Personal Representative of the Estate of Shirley Bernstein, has admitted to fraudulently altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff investigators, which had the effect of benefitting TED'S family over others.

82. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as Personal Representative in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley while the Estate was closed and no successor to Simon was ever appointed.

83. Statements made by SPALLINA to Palm Beach Sheriff Investigators reveal that TED made distributions while acting as Trustee against the advice of his counsel that benefited his family to

the determinant of beneficiaries in Shirley's Trust, again making him wholly unfit to continue as a fiduciary in these matters.

84. TED claimed to Palm Beach Sheriff Investigators that he had not read all of the trust documents that he was acting as a fiduciary under and only followed orders from his counsel TESCHER and SPALLINA.
85. TED's involvement with his former counsel TESCHER and SPALLINA in illegal and highly unethical activity all to benefit TED directly in the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Shirley and Simon Trusts or any other fiducial capacities involving the estates and trusts of Simon and Shirley.
86. TED has failed to act impartially as a fiduciary in both Simon and Shirley's estates and trusts as among beneficiaries, in violation of Florida Statute 736.0803 and therefore TED cannot be expected to act impartially in the future due to his multiple conflicts of interest, adverse interests with beneficiaries and implication in ongoing criminal investigations and civil litigations, in both state and federal, civil and criminal, actions.

COUNT V

THIS COURT PREVIOUSLY REJECTED TED AS A FIDUCIARY IN THE ESTATE OF SIMON BERNSTEIN

87. TED's Petition to be appointed Curator or Personal Representative in Simon's Estate was rejected on February 19th, 2014 by this Court. See, Order attached hereto as **Exhibit "E."** The same reasons the Court did not appoint TED in this fiducial capacity, including that it would shut down the proper and efficient administration of the Estate of Simon, are applicable in removing TED now in the Shirley Trust.

WHEREFORE, COUNTER Plaintiff requests that this Court;

- 1) Remove TED as the alleged successor trustee of the Shirley Trust,

- 2) Appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
- 3) Require the filing of a Shirley Estate and Shirley Trust Accounting as none has been provided to beneficiaries for over FOUR years.
- 4) Award damages for failure to account or for improper accounting, including the removal of the trustee, reducing or denying compensation to the trustee, requiring the trustee to repay money to the trust or by restoring property to the trust by other means, or any other relief the court deems appropriate.
- 5) Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
- 6) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- 7) Deny compensation to the trustee;
- 8) Subject to §736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
- 9) Order any other appropriate relief.

Dated: Thursday, November 20, 2014

Eliot Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
iviewit@iviewit.tv

CERTIFICATE OF SERVICE

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Thursday, November 20, 2014

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, **Thursday, November 20, 2014.**

Eliot Bernstein, Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
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SERVICE LIST

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EXHIBIT A

Shirley Bernstein Trust Agreement, dated May 20, 2008

EXHIBIT B

First Amendment to Shirley Trust

EXHIBIT C

Second First Amendment to Shirley Trust

EXHIBIT D

Donald R. Tescher, Esq. and Robert L. Spallina, Esq. Resignation Letter

EXHIBIT E

February 19th, 2014 Court Order – Denying Ted Bernstein Petition to become Curator