

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

CASE NO. 502014CA14637XXXXMB  
HON. GREGORY M. KEYSER

ELIOT BERNSTEIN, individually;  
ELIOT BERNSTEIN as a beneficiary of the  
2008 SIMON L. BERNSTEIN TRUST  
AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND  
RESTATED TRUST AGREEMENT dated  
July 25, 2012 and as Legal Guardian of  
JOSHUA BERNSTEIN, JACOB BERNSTEIN,  
and DANIEL BERNSTEIN,

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;  
THEODORE STUART BERNSTEIN, as Successor  
Trustee of the 2008 SIMON L. BERNSTEIN  
TRUST AGREEMENT, as amended and restated in the  
SIMON L. BERNSTEIN AMENDED AND RESTATED  
TRUST AGREEMENT dated July 25, 2012;  
ALEXANDRA BERNSTEIN;  
ERIC BERNSTEIN;  
MICHAEL BERNSTEIN;  
MOLLY SIMON;  
JULIA IANTONI;  
MAX FRIEDSTEIN;  
CARLY FRIEDSTEIN;  
JOHN AND JANE DOE 1-5000,

Defendants.

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**MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA  
STATUTE 736.0813 AND 736.08135**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Plaintiff), individually and as a  
beneficiary of the “2008 SIMON L. BERNSTEIN TRUST AGREEMENT, as amended and

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restated in the SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012” individually PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the “SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012” and hereby files this “MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135” and in support thereof states, as follows:

1. That on September 13, 2012, Robert Spallina, Esq. and Donald Tescher, Esq. became Co-Trustees of the alleged “SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012” and failed to ever produce for this trust an accounting within the statutory time required while they were acting as fiduciaries despite repeated demands from beneficiaries and interested parties.
2. That on or about January 14, 2014 it is alleged that a transfer of trusteeship occurred, SEE EXHIBIT “A” – Tescher Resignation Letter, after Tescher and Spallina’s removal by this Court and after their resignation letter admitted that their law firm Tescher & Spallina, PA had fraudulently altered a trust document as part of fraud to alter beneficiaries of a Bernstein family trust POST MORTEM of the decedent. The fraud primarily benefited their business associate and legal client Theodore Stuart Bernstein, who they then without court approval allegedly transferred trusteeship to and neither the resigning parties nor successor party provided any statutorily required documentation or accountings upon such alleged fraudulent transfer of trusteeship.
3. It is alleged that Ted Bernstein began acting as the alleged Successor Trustee of the “2008 SIMON L. BERNSTEIN TRUST AGREEMENT, as amended and restated in the SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012”,

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through a fraudulent transfer of trusteeship and despite language in the original and amended trust that specifically preclude Theodore from acting as Trustee, as he is considered predeceased in both the alleged original and amended Simon trust documents.

4. That former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.0813 1(a), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact the fiduciaries have worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole.

Florida Statute 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.

736.0813 (1)(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

5. That former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.0813 1(b), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the identity of the settlor(s), the right to request a copy of the trust instrument, the right to accountings under this section and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact the fiduciaries have worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole.

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Florida Statute 736.0813(1)(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, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

6. That the former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.0813 1(c), by failing to provide beneficiaries with a complete copy of the original 2008 trust instrument and the alleged 2012 amended and restated trust with all codicils, amendments, addendums, etc. despite repeated written and oral requests by beneficiaries. Further, inspection of the original 2008 trust document has been denied despite Tescher and Spallina admitting that their law firm ALTERED POST MORTEM a document in the Shirley Bernstein Trust and FORGED and FRAUDULENTLY NOTARIZED six documents for SIMON POST MORTEM as part of fraud to illegally alter and change beneficiaries of the Simon and Shirley Trusts, causing beneficiaries the need to verify the original documents and have them inspected as to validity. Further, the 2008 original Simon Trust was suppressed and denied to beneficiaries for over a year by Tescher and Spallina until they produced it after the Court Order for production upon their removal. In reviewing the 2008 trust it is alleged that further fraud was undertaken in amending the trust in 2012. Finally the 2012 amended trust has already been verified as improperly notarized by Governor Rick Scott's Notary Public Division so as to make it impossible to determine if Simon Bernstein was present on the date the document was notarized.

Florida Statute 736.0813(1)(c)

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

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7. That the former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.0813 1(d), by failing to provide beneficiaries upon their acting as Trustee with a trust accounting as set forth in s. 736.08135 from the date of last accounting, which there has been none since September 13, 2012 when Tescher and Spallina began acting as Co-Trustees and since Ted became alleged Successor Trustee. No accounting was done annually by the former Co-Trustees or the current alleged Successor Trustee, Ted. No accounting was done on the change of the trustee from Tescher and Spallina to Ted, of which transfer of trusteeship was also done unethically and in violation of Trust statutes and rules.

Florida Statute 736.0813(1)(d)

A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

8. That the former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.0813 1(e), by failing to provide beneficiaries with relevant information about the assets and liabilities of the trust and the particulars relating to administration and have refused repeated written and oral demands to comply with this section.

Florida Statute 736.0813(1)(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.

9. That the former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.08135(1) by failing to provide beneficiaries a reasonably understandable report from the date of last accounting, which there has been none done ever and from the date the trustees became

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accountable and thus there was no disclosure whatsoever of the assets and liabilities of the trust corpus.

736.08135 Trust accountings.—

(1) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).

10. That the former Co-Trustees, Robert Spallina, Esq. and Donald Tescher, Esq. and the current alleged Successor Trustee, Ted Bernstein have all violated Florida Statute 736.08135(2)(a)(b)(c)(d)(e)&(f) by failing to provide ANY timely and legally required accountings to the beneficiaries.

736.08135

(2)(a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.

(c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.

(e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.

(f) The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

WHEREFORE, Eliot requests that this Court enter an order;

- i. To compel trust accounting under Florida Statute 736.0813 AND 736.08135 and within 10 days of the Court Order as enough time has passed since the death of the decedent (over two years) to demand an expedited accounting,

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- ii. to on the Court's own initiative remove Ted Bernstein as alleged Successor Trustee for failing to follow Florida Trust Codes and Statutes,
- iii. for legal fees of Eliot Bernstein Pro Se,
- iv. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, January 30, 2015

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his 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, Friday, January 30, 2015.

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

X \_\_\_\_\_

**SERVICE LIST**

|   |   |  |
|---|---|--|
| <p>Alan B. Rose, Esq.<br/>         PAGE, MRACHEK, FITZGERALD, ROSE,<br/>         KONOPKA, THOMAS &amp; WEISS, P.A.<br/>         505 South Flagler Drive, Suite 600<br/>         West Palm Beach, Florida 33401<br/>         arose@pm-law.com<br/>         and<br/> <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> | <p>John P Morrissey. Esq.<br/>         John P. Morrissey, P.A.<br/>         330 Clematis Street<br/>         Suite 213<br/>         West Palm Beach, FL 33401<br/>         john@jmorrisseylaw.com</p> | <p>Carley &amp; Max Friedstein, Minors<br/>         c/o Jeffrey and Lisa Friedstein<br/>         Parents and Natural Guardians<br/>         2142 Churchill Lane<br/>         Highland Park, IL 6003<br/>         Lisa@friedsteins.com<br/>         lisa.friedstein@gmail.com</p> |
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|  |  |  |
|--|--|--|
| Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians<br>210 I Magnolia Lane<br>Highland Park, IL 60035<br><a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a> |  |  |
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TESCHER & SPALLINA PA RESIGNATION  
LETTER

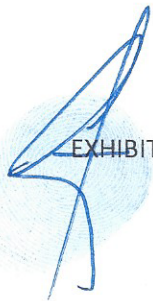
A handwritten signature in blue ink, consisting of several overlapping loops and a long vertical stroke extending downwards.

EXHIBIT A

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

ATTORNEYS  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

January 14, 2014

VIA U.S. MAIL AND EMAIL

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

Lisa S. Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035

Pamela B. Simon  
950 North Michigan Ave.  
Suite 2603  
Chicago, IL 60606

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035

**Re: Estates and Trusts of Shirley Bernstein and Simon Bernstein**

Dear Ladies and Gentlemen:

It has been brought to my attention that a document was prepared in our office that altered the disposition of the Shirley Bernstein Trust subsequent to Simon Bernstein's death. Information provided to me appears to indicate that there were two versions of the First Amendment to the Shirley Bernstein Trust Agreement, both executed on November 18, 2008. Under one version the children of Pam Simon and Ted Bernstein would not be permissible appointees of Simon Bernstein's exercise of the power of appointment while under the second version that restriction was removed. As you all know, Simon Bernstein's dispositive plan, expressed to all of you during his lifetime on a conference call, was to distribute the Estate to all ten of his grandchildren. That was the basis upon which the administration was moving forward.

Under the Shirley Bernstein Trust, there is a definition of children and lineal descendants. That definition excluded Pam Simon, Ted Bernstein and their respective children from inheriting. The document also contained a special Power of Appointment for Simon wherein he could appoint the assets of the Trust for Shirley's lineal descendants. Based upon the definition of children and lineal descendants, the Power of Appointment could not be exercised in favor of Pam Simon, Ted Bernstein or their respective children, although we believe it was Simon Bernstein's wish to provide equally for all of his grandchildren.

On November 18, 2008, it does appear from the information that I have reviewed that Shirley Bernstein executed a First Amendment to her trust agreement. The document as executed appears to make only one relatively minor modification to her trust disposition by eliminating a specific gift to Ted

Post Mortem change to Trust to alter beneficiaries of Estate now admitted by Spallina to Sheriff.

So whole time that they worked to distribute Shirley Trust Assets to ten grandchildren they knew it could not be done legally.



Bernstein Family  
January 14, 2014  
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Spallina later admits to Palm Beach County Sheriff that he altered the document but only after we bust them in Court with the fact that it cannot be the ten grandchildren they claimed in Court and to many other parties to make distributions knowingly to improper parties. Spallina and Tescher acted over and over to make the improper distributions to the ten grandchildren and when necessary to show their claim it was the grandchildren, they went and created a new post mortem document to accomodate their fraudulent scheme.

Bernstein's stepson. In January of 2013 a First Amendment to the Shirley Bernstein Trust Agreement was provided to Christine Yates, Esq. who, at that time, was representing Eliot Bernstein. The document provided contained a paragraph number 2 which modified the definitional language in Shirley's document so as to permit, by deleting the words "and their respective lineal descendants" from the definition, an exercise of the power of appointment by Simon Bernstein over the Shirley Bernstein Trust to pass equally to all ten grandchildren rather than only six of the grandchildren.

By virtue of The Florida Bar Rules of Professional Conduct, I am duty bound to provide this information to you. Obviously, as a result of the issues and ramifications raised by the allegations, my firm must resign from further representation in all matters relating to the Estates and Trusts of Simon Bernstein and Shirley Bernstein. Furthermore, it is my intent, and I assume also the intent of Robert Spallina, to tender our resignations as personal representatives of the Simon Bernstein Estate and as trustees of the Simon Bernstein Trust. If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity. With regard to the Simon Bernstein Estate, the appointment of the successor would require a court proceeding.

Don knows the alleged 2012 Simon Trust successor cannot be Ted due to language that prohibits this apponint and Don should know, he did the document but yet needs to continue fraud and cover up

Yet, continues to act and even prepares an accounting after resigning and withdrawing in court.

I am obviously upset and distraught over this chain of events and will do all that I reasonably can to correct and minimize any damages to the Bernstein family. As I believe you know, to date there has only been a modest funding of some, but not all, of the continuing trusts for the grandchildren emanating from Shirley's Trust assets.

Very truly yours,

DONALD R. TESCHER

DRT/km

cc: Alan Rose, Esq.

