

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;
Robert L. Spallina, Esq., Personally;
Robert L. Spallina, Esq., Professionally;
Donald R. Tescher, Esq., Personally;
Donald R. Tescher, Esq., Professionally;
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;
Theodore Stuart Bernstein, Individually;
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
Theodore Bernstein as Personal Representative of the Shirley Estate;
Lisa Sue Friedstein, Individually;
Jill Marla Iantoni, Individually;
Pamela Beth Simon, Individually;
Mark Manceri, Esq., Personally;
Mark Manceri, Esq., Professionally;
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;
Alan B. Rose, Esq. – Personally;

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Alan B. Rose, Esq. – Professionally;
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;
John J. Pankauski, Esq. – Personally;
John J. Pankauski, Esq. – Professionally;
Kimberly Francis Moran – Personally;
Kimberly Francis Moran – Professionally;
Lindsay Baxley aka Lindsay Giles – Personally;
Lindsay Baxley aka Lindsay Giles – Professionally;
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;
Simon Bernstein Trust Agreement Dated May 20th 2008;
Shirley Bernstein Trust Agreement Dated May 20th 2008;
The Estate of Simon Bernstein;
The Estate of Shirley Bernstein;
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
John and Jane Doe’s (1-5000),

Counter Defendants.

I

**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 “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and ELIOT IVAN BERNSTEIN as Trustee of the “ELIOT BERNSTEIN FAMILY TRUST dated

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May 20, 2008”, PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” 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. It is alleged that Ted Bernstein began acting as the alleged Successor Trustee of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” on or about September 13, 2012 and this despite language in the alleged trust that specifically preclude Theodore from acting as Trustee, as he is considered predeceased for all purposes of disposition and distributions of the trust.
2. That the current alleged Successor Trustee, Ted Bernstein has 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 Ted has 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 for over two years.

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.

3. That the current alleged Successor Trustee, Ted Bernstein has 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.

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.

4. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(c), by failing to provide beneficiaries with a complete copy of the original 2008 trust instrument 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 to close Shirley's Estate, all as part of a larger fraud to illegally alter and change beneficiaries of the Simon and Shirley Trusts and convert assets to improper parties, including Ted, causing beneficiaries the need to verify the original documents and have them inspected as to their validity.

Florida Statute 736.0813(1)(c)

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

5. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(d), by failing to provide beneficiaries upon acting as Trustee with a trust accounting as set forth

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in s. 736.08135 from the date of last accounting, which there has been none since December 08, 2010 when the decedent died and since Ted became alleged Successor Trustee on September 13, 2012. No statutorily required accounting was done annually by the former Trustees or the current alleged Successor Trustee, Ted.

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.

6. That the current alleged Successor Trustee, Ted Bernstein has 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.

7. That the current alleged Successor Trustee, Ted Bernstein has 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 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).

8. 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.

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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.

9. That on September 13, 2012 Ted Bernstein began acting as the alleged Successor Trustee of the Shirley Trust, despite language in the trust that precludes him from acting as Trustee.

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,
- 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, as
Trustee 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, as
Trustee and as legal guardian on behalf of his
three minor children

X _____

SERVICE LIST

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IN THE CIRCUIT COURT OF THE FIFTEENTH
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PALM BEACH COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB
Hon. Martin Colin

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as Trustee of the ELIOT BERNSTEIN FAMILY
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Counter Plaintiffs,

v.

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ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;
John and Jane Doe’s (1-5000),

Counter Defendants.

I

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

UPON CONSIDERATION OF THIS MATTER for a MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135, it is hereby

ORDERED AND ADJUDGED that the MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135 is hereby

_____.

That an accounting shall be produced within 10 days of this ORDER,

_____.

DONE AND ORDERED in Chambers, at Palm Beach County, Florida, on this

_____ day of _____, 2015.

HON. MARTIN COLIN