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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**URGENT MOTION FOR COURT TO INSTANTLY REMOVE ON ITS OWN MOTION TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE and his counsel alan b. rose, esq. UNDER FLORIDA STATUTE 736.0706 BASED ON NEW INFORMATION OF FIDUCIARY AND ATTORNEY AT LAW BREACHES OF FIDUCIARY DUTIES AND ALLEGED UNLAWFUL AND UNETHICAL MISCONDUCT**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Plaintiff”), Pro Se, individually and 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 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 “**URGENT MOTION FOR COURT TO INSTANTLY REMOVE ON ITS OWN MOTION TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE and his counsel alan b. rose, esq. UNDER FLORIDA STATUTE 736.0706 BASED ON NEW INFORMATION OF FIDUCIARY AND ATTORNEY AT LAW BREACHES OF FIDUCIARY DUTIES AND ALLEGED UNLAWFUL AND UNETHICAL MISCONDUCT**” and in support thereof states, on information and belief, as follows:

1. That Florida Statute 736.0706 states

**Removal of trustee.—**

(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be **removed by the court on the court’s own initiative.**

(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;

(c) **Due to the 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.

(3) **Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.**

History.—s. 7, ch. 2006-217.

1. Further Florida Bar Rules state,

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

4 RULES OF PROFESSIONAL CONDUCT

4-8 MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT

1. Reporting Misconduct of Other Lawyers. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate professional authority.
2. That Eliot has already filed Petitions and Motions to Remove Theodore S. Bernstein (“Ted”) with this Court, which are waiting to be heard that detail and provide prima facie evidence of a number of very serious alleged violations of fiduciary duties and state and federal criminal codes against the alleged Successor Trustee Ted and his counsel, Alan B. Rose, Esq. (“Rose” or “Alan”), including language in the alleged Trust document that prohibits Ted from being a Successor Trustee of the Simon Estate.
3. That Eliot has recently come into possession of new Prima Facie evidence (see Exhibit A – December 16, 2014 Email between Peter Feaman, Esq. and Brian O’Connell, Esq. exposing Attorney at Law and Fiduciary Misconduct) that causes the Court to now act on its own initiative under 736,0706 (2) to remove Ted and Rose, due to a serious breach of trust exposed, involving alleged violations of attorney conduct codes, fiduciary duties and law, as so stated by an attorney at law, Peter Feaman, Esq. (Creditor William Stansbury Counsel) in an email sent to Brian O’Connell, Esq. (Personal Representative of the Estate of Simon) that reports on the misconduct of another attorney at law, Rose and Ted as an alleged Fiduciary, both Officers of this Court.
4. The email exchange exhibits unfitness, unwillingness, or persistent failure of the alleged Successor Trustee to administer the trust effectively and contains information regarding conflicts of interest of Ted and Rose and other violations of ethics and law taking place, which provide cause for the court, ON ITS OWN INITIATIVE to determine if removal of the alleged Successor Trustee best serves the interests of the beneficiaries and thereby compels this Court to act on its own motion to remove Ted instantly in order to protect the beneficiaries, creditors, interested parties, the integrity of this Court and the assets of the Simon Trust, the Shirley Trust and the Shirley Estate.
5. That the email exchange between Attorney at Law, Peter Feaman, Esq., who has been representing a Creditor to the Estate and Trusts of Simon and Shirley Bernstein, William Stansbury and the newly appointed Personal Representative of the Estate of Simon, Brian O’Connell, Esq., states in part:

Subject: Bernstein Estate
Date: Tue, 16 Dec 2014 15:57:54 -0500
From: pfeaman@feamanlaw.com
To: boconnell@ciklinlubitz.com
CC: jroyer@feamanlaw.com

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein, I think.

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

**Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.**

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct $1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

**Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.**

Further, it would seem to me **that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.**

The bottom line is that the more this drags on, **the worse it is going to get for all concerned**.

At some point, respectfully, I think you are going to have to take the bull by the horns and **1.) demand that Ted Bernstein resign as Successor Trustee** and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury 's efforts.

I welcome your thoughts on this.

Peter M. Feaman

Peter M. Feaman, P.A.

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone:      561-734-5552

Facsimile:        561-734-5554

www.feamanlaw.com

**Confidentiality: The email message and any attachment to this email message may contain privileged and confidential information, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you receive this communication in error, please immediately notify the sender by return email and delete this message.**

1. That this email exchange exposes that there is alleged conspiratorial misconduct by the Fiduciary in charge of various estate and trusts of Simon and Shirley, Theodore Stuart Bernstein and his counsel, Alan B. Rose, Esq., who he has retained in a variety of capacities to replace his former disgraced Attorneys at Law, Robert Spallina, Esq. and Donald Tescher, Esq. who have been removed from the Estates and Trusts of Simon and Shirley Bernstein in all legal and fiduciary capacities they alleged to have had, due to their own personal and law firm’s involvement in a series of Felony Acts, including but far from limited to,
	1. Fraudulently Altering a Trust document in efforts to change beneficiaries unlawfully and making distribution to improper parties in efforts to fraud other beneficiaries,
	2. Fraudulently amending and restating a trust document,
	3. Fraudulently Notarizing six documents, for six separate parties, including for Simon Post Mortem leading to arrest and conviction of their Legal Assistant and Notary Public Kimberly Moran,
	4. Forging six documents, for six separate parties, including for Simon Post Mortem,
	5. Depositing six fraudulently notarized and six forged documents with the Court as part of a fraud on this Court,
	6. Depositing the six documents and other documents necessary to close the Estate of Shirley Bernstein on behalf of a deceased Personal Representative, Simon Bernstein, in order to fraudulently close the Estate of Shirley Bernstein, which was subsequently reopened and remains so today, due to these felonies.
2. That this email exchange from Feaman to O’Connell relates to Ted Bernstein and his counsel’s actions in an Illinois Federal Court action, whereby again Ted acts as an alleged Successor Trustee to a legally nonexistent trust, in self-dealing efforts to convert an insurance policy to improper parties, including himself, as part of an alleged fraud to pay improper parties a life insurance policy death benefit. (See Exhibit B - NON-JOINT REASSIGNMENT MINORITY STATUS REPORT)
3. That the Court may recall in an earlier hearing before Hon. Judge Colin to remove Ted that was delayed due to a standing issue that caused a new trust lawsuit to be ordered by Your Honor, Brian O’Connell made an initial opening statement to the Court that Ted Bernstein was precluded by the language of the alleged Simon Trust to be a fiduciary and read into the record the trust language that precluded him but the Court did not act at that time to remove Ted, despite the obvious violation of trusteeship.
4. That Tescher and Spallina are alleged to have committed a series of other state and federal criminal offenses and civil torts, including Insurance Fraud and Fraud on a Federal Court, in conspire with Ted that are all under ongoing criminal investigations and are part of ongoing civil cases in both state and federal courts that directly implicate Ted and his counsel Alan B. Rose, Esq. and others in the criminal activities under investigation, (see Exhibit B – Palm Beach County Sheriff Supplemental Report.)
5. That this email between Feaman and O’Connell implicates other serious breaches of fiduciary duties, ethical cannons and law that Alan B. Rose, Esq. is directly involved in and facilitating through improper and illegal representation of Ted and as such, Florida Bar Rules state,

Rule 4-8.4 MISCONDUCT

A lawyer shall not:

(a) violate or attempt to violate the Rules of Professional Conduct**, knowingly assist or induce** another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyers honesty, trustworthyness, or fitness as a lawyer in other respects;

(c) **engage in conduct involving dishonesty, fraud, deceit, or misrepresentation**;

(d**) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice--**

Comment: --Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of these characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

1. That due to the serious nature of the misconduct levied against both Ted and Alan, alleged by a member of the Florida Bar, Feaman, to another member of the Florida Bar, O’Connell and now transmitted herein to Your Honor, yet another member of the Florida Bar, each licensed attorney having this knowledge of misconduct by an attorney at law and a fiduciary, both who are acting as Officers of this Court in these matters, are by the Attorney Conduct Code, RULE 4-8.3 REPORTING PROFESSIONAL MISCONDUCT and law, duty-bound to report this attorney and fiduciary misconduct to the appropriate state and federal criminal and ethical authorities, as the misconduct exposed appears to violate both ethics codes and law.
2. That until such matters are fully reported by the appropriate parties (Feaman, O’Connell and Your Honor) to the proper authorities and all ongoing criminal investigations and civil actions against both Ted and Alan are adjudicated to conclusion, this Court must act on its own intiative as allowed and remove Ted and his counsel Alan from any further fiducial or legal capacities in the Estates and Trusts of Simon and Shirley Bernstein and as Officers of this Court until these matters are resolved. This action of the Court would be in the interest of protecting the Beneficiaries and Interested Parties who have already been harmed by the proven criminal actions of Ted’s former counsel, Tescher and Spallina, who also acted as Fiduciaries and Attorneys at Law in the Simon Estate and Trusts and attempted to fraudulently change beneficiaries of the Estates and Trusts to benefit their business associate and close personal friend, Ted.
3. That the Court must take these actions to preclude new crimes from being committed, new breaches from occurring and loss of further Estate and Trust assets from the continued misconduct, including continued Fraud on this Court, the beneficiaries and others. As attorney Feaman claims in his email this is putting EVERYONE at risk, including this Court, the Beneficiaries, Creditors, other Attorneys at Law who are forced to work with knowingly conflicted parties.
4. That the Court should notify the Federal Court in Illinois of the alleged conflict of interest in that litigation that the Estate is now involved in after this Court approved the intervention that Ted and his counsel attempted to block and where the Illinois Federal Court has now accepted the Estate as an intervenor.
5. That the Court should be apprised that the beneficiaries are alleged to include five minor children under the tutelage of this Court and that all five appear not to have legal counsel protecting their interests and their parents have conflicting interests. These conflicts in certain instances may be the reason no counsel has been secured for the minors by the alleged Successor Trustee Ted, who is conflicted with all the beneficiaries other than his own children or their parents.
6. That hearings to remove Theodore and his counsel remain pending, filed by Beneficiaries and Interested Parties, however, based on this new Prima Facie evidence requiring immediate reporting and investigation to the appropriate regulatory agencies of the alleged misconduct, this Court must act immediately and on its initiative to remove Ted and Alan and report these matters.
7. That a list of filings (see Exhibit D) - Petitions and Motions to Remove Fiduciaries) to remove Ted await being heard in the Estate of Simon, the Shirley Estate and Shirley Trust, all containing irrefutable reasons for this Court to act on its own initiative to remove Ted, especially where some of the filings are from licensed attorneys at law that show misconduct of Ted as a fiduciary and his counsel Rose.
8. That Eliot is filing Pro Se to have hearings to remove Ted in the Shirley Trust, the Simon Trust and the Shirley Estate and has met obstacle after obstacle trying to schedule these hearings with Alan despite the fact that the Court has requested to have these hearings heard next to determine if Ted is qualified at this time to be a fiduciary. Every scheduling attempt is met with delays by Rose who at each turn attempts to have other matters heard to benefit Ted prior to the hearings to determine if Ted is qualified. If this Court will not remove Ted on its own motion based on the facts already presented to the Court in countless filings to remove Ted by Eliot and others, then this Court must demand a hearing time as soon as possible and force the hearing to remove Ted to be heard before any other matters involving Ted and his counsel are heard, in order to protect the interests of the beneficiaries, creditors and interested parties and prevent further fraud, waste and abuse from occurring.
9. That no administration of the Estate and Trusts where Ted and his counsel are acting can move forward until the motions to remove Ted are heard. Any actions before the Court that are heard prior to the hearings to remove Ted and any orders derived from them will all have to be reheard if in fact Ted is later found to have not been qualified to act as a fiduciary, all costing everyone involved a fortune in time, effort and monies to hear knowingly frivolous, vexatious and fraudulent filings tendered by Ted and Rose.
10. That in a recent filing in the Shirley Trust Construction Case that Ted and Alan filed (Case # 502014CP003698XXXXSB - Filing # 23874665 E-Filed 02/17/2015 05:23:37 PM – “ANSWER AND AFFIRMATIVE DEFENSE”) in an Answer filed by the newly appointed Personal Representative of the Estate of Simon, Brian O’Connell, Esq., (who this Court has already noted his outstanding capabilities as an Attorney at Law in Florida) states, “AFFIRMATIVE DEFENSE - 1. First Affirmative Defense - Lack of Standing - Ted Bernstein lacks the requisite standing **as he is not validly serving as Trustee of the Simon Trust,** is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust. [**emphasis added**]” Again, Brian O’Connell, Esq. a licensed attorney at law is notifying the Court that **Ted is not a valid Trustee** and he already informed the Court in a hearing before Your Honor on August 19, 2014 to remove Ted that language which he read into the record from the alleged Simon Trust specifically precludes Ted from acting as Trustee. That the hearing was challenged on standing and by Court Order had to be refiled in a new case, as the filing to remove Ted was filed in the Simon Estate case and was to remove Ted in the Simon Trust.

WHEREFORE, Eliot requests that this Court enter an order;

* 1. on its own initiative under Florida Statute 736.0706 to remove Theodore Stuart Bernstein as the alleged Successor Trustee of the Simon Trust for good and just cause,
	2. secure all records and assets of the Simon Trust until a new Successor Trustee can be found,
	3. order an immediate EMERGENCY hearing to remove Ted if necessary that the Court schedules and all parties with interests are compelled to attend,
	4. notifying the appropriate state and federal authorities of the alleged misconduct of Ted and Alan as required under Attorney Conduct Codes, Judicial Cannon and law,
	5. award Pro Se legal fees and costs of Eliot and Candice Bernstein,
	6. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Wednesday, February 18, 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, Wednesday, February 18, 2015.

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

 X\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SERVICE LIST**

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| --- | --- | --- |
| Alan B. Rose, Esq.PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A.505 South Flagler Drive, Suite 600West Palm Beach, Florida 33401arose@pm-law.com andarose@mrachek-law.com | John P Morrissey. Esq. John P. Morrissey, P.A.330 Clematis StreetSuite 213West Palm Beach, FL 33401john@jmorrisseylaw.com | Carley & Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians2142 Churchill LaneHighland Park, IL 6003Lisa@friedsteins.com lisa.friedstein@gmail.com |
| Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians210 I Magnolia LaneHighland Park, IL 60035jilliantoni@gmail.com |  |  |

EXHIBIT A

December 16, 2014 Email between Peter Feaman, Esq. and Brian O’Connell, Esq. exposing Attorney at Law and Fiduciary Misconduct

EXHIBIT B

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

EXHIBIT C

Palm Beach County Sheriff Supplemental Report

EXHIBIT D

Petitions and Motions to Remove Fiduciaries