

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

In re:

ESTATE OF SIMON BERNSTEIN,  
Deceased.

Case No. 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**  
Division: IY

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**RESPONSE TO MOTION TO STRIKE STANSBURY'S  
OBJECTIONS TO ACCOUNTING OF TESCHER & SPALLINA  
AND/OR TO DECLARE THE OBJECTIONS ABANDONED**

COMES NOW Interested Person and Creditor of the Estate of Simon Bernstein, WILLIAM E. STANSBURY, ("Stansbury"), by and through his undersigned counsel, and, in response to the Motion to Strike Stansbury's Objections to Accounting of Tescher & Spallina and/or To Declare the Objections Abandoned (the "Motion"), Stansbury states as follows:

1. On January 22, 2014, Robert L. Spallina and Donald R. Tescher filed a Petition for Resignation and Discharge as Co-Personal Representatives of the Estate of Simon Bernstein ("Tescher and Spallina") due to "irreconcilable differences" with the children and grandchildren of Simon Bernstein.

2. The Court granted Tescher and Spallina's resignation by Order dated February 18, 2014, but deferred on the discharge until after, among other matters, the filing of Tescher and Spallina's accounting (the "Accounting") as Co-Personal Representatives.

3. The Accounting was served on May 1, 2014. Stansbury's served his objections on June 2, 2014. Stansbury served his Notice of Hearing on his Objections to the Accounting on January 22, 2015.

4. Stansbury is entitled to have his objections heard because the 90 day hearing request period cited by Tescher in his Motion to Strike does not apply to the objections filed by Stansbury.

5. The Motion cited the wrong rule applicable to this situation. Probate Rule 5.401 relied upon in the Motion applies to “Final Accountings” that are submitted at the time an estate is preparing to close, but not to the accounting of a resigning or removed fiduciary. *See, e.g. Estate of Cummins v. Bowman*, 979 So.2d 984 (Fla. 3<sup>rd</sup> DCA 2008) (*Rule 5.401 applied to objections to the personal representative’s petition for discharge, final accounting, and plan of distribution.*) The Rule places a 90 day time limit for persons objecting to the Final Accounting to set it for hearing so that the estate does not remain open indefinitely after objections to the accounting are made. If the hearing is not timely requested the objections are deemed abandoned.

6. The proper rule applicable to the Accounting filed by Tescher and Spallina is Probate Rule 5.345, which provides as follows:

**Rule 5.345. Accountings Other Than Personal Representatives’ Final Accountings.**

**(a) Applicability and Accounting Periods.** This rule applies to the interim accounting of any fiduciary of a probate estate, the accounting of a personal representative who has resigned or been removed, and the accounting of a curator upon the appointment of a successor fiduciary. . . .


(emphasis added)

7. It is clear from the text of this Rule that, despite being designated a “Final Accounting,” the Tescher and Spallina Accounting was an interim accounting filed by fiduciaries that had resigned. In other words, it was “final” for Tescher and Spallina but not “Final” as a

necessary step to close the estate as is contemplated by Rule 5.401. *See, In Re Estate of Eisenberg*, 466 So.2d 1221 (Fla. 4th DCA 1985) (*Rule 5.345 applied to interim accounting.*)

8. A review of the remainder of Rule 5.345 demonstrates that no limitation exists within which an interested person must request a hearing on properly asserted objections to interim accountings or accountings filed by resigned or removed fiduciaries in order to avoid a determination that the objections will be deemed abandoned. Such a limitation is only found in Rule 5.401(d) for true Final Accountings filed in connection with the closing of an estate.

WHEREFORE, Interested Person, WILLIAM E. STANSBURY, requests that this Court deny Donald R. Tescher's Motion to Strike Stansbury's Objections to Accounting of Tescher & Spallina and/or To Declare the Objections Abandoned, thereby determining that Stansbury's objections are entitled to be heard and a hearing set for that purpose, and for such other relief as the Court deems just and proper.

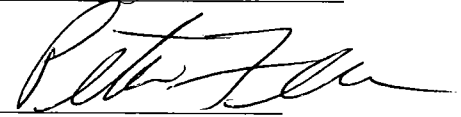
  
Peter M. Feaman

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 18 day of March, 2015.

PETER M. FEAMAN, P.A.  
3695 W. Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
Tel: 561-734-5552  
Fax: 561-734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_



Peter M. Feaman  
Florida Bar No. 0260347