

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

Probate Division
Case No.: 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

**ELIOT I. BERNSTEIN'S OPPOSITION
TO IMPROPER HEARING CALLED
UP BY TRUSTEE TED BERNSTEIN
AND COUNSEL ALAN ROSE**

v.

ALEXANDRA BERNSTEIN; et al.,

Defendants.

COMES NOW Eliot I. Bernstein, being duly sworn who hereby deposes and says under oath and penalties of perjury in filing this Opposition to an improper hearing called up by Trustee Ted Bernstein and Alan Rose and says as follows:

1. I file this opposition to the improperly noticed Hearing filed by Florida licensed attorney Alan Rose on behalf of the alleged Trustee Ted Bernstein and move to Strike the Hearing from the Calendar and move that attorney Rose be sanctioned accordingly.
2. Attorney Alan Rose and alleged Trustee Ted Bernstein had actual knowledge of my filing of a Notice of Unavailability throughout the month of January and have now called up their second Motion for a Hearing disregarding said Notice and in this instance not even providing 2 days Notice while failing to call the motion or Notice an Emergency. See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151223%20Notice%20of%20Unavailability%20Eliot%20Bernstein%2036989%20case%20ECF%20STAMPED%20COP%20Y.pdf>

3. The motion should be struck from the Calendar or at minimum rescheduled.

4. These actions are even more egregious as the Notice for the Hearing on Jan. 7, 2016 was not even filed by Alan Rose until after regular business hours on Jan. 5th, 2016 being filed after 5 pm despite the fact that Alan Rose and Ted Bernstein were both on a phone Conference Call / Meeting earlier in the day which included my attorney Candice Schwager of Texas who is seeking Pro Hac Vice admission and previously sought a continuance of the alleged validity Trial of Dec. 15, 2015, yet Alan Rose at no time mentioned any issue of emergency nature involving minor children to attorney Schwager either before, during or after this phone Meeting just yesterday.
5. Attorney Alan Rose not only never contacted my attorney Candice Schwager who he was on the phone with just yesterday, Jan. 5, 2016, but he also never contacted me in the scheduling of this matter.
6. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.
7. This is nothing but more of the same "sharp practices" and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
8. Florida Licensed attorney (presently) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the "grandchildren" to Shirley and

Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.

9. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

10. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

11. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf>) to seek his voluntary withdrawal

of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

12. There was minimal if virtually any naming of the “grandchildren” and/or “minor children” in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
13. As attorney Schwager pointed out in her letter, “Thus, it truly appears that your motion is more of a “smoke-screen” and “sharp practices” which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.”
14. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein’s business partner / former business partner Robert Spallina’s testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly (and frantically) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.
15. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”

16. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
17. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
18. Minor children ultimately have to grow up and learn the laws of civil societies.
19. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown ***nothing specific of a compelling nature*** with respect to the minor children and this motion should be struck from the Calendar and denied.
20. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor children’s prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to Fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

21. The SEC Consent Orders¹ for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.
22. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset."
23. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

¹ September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

24. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>
25. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.
26. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child’s name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children’s behalf either.
27. Nothing else more than that should happen here.
28. Alan Rose and Ted Bernstein’s desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, “In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations case.⁸The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property.”
29. “This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these

proceedings.” District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

30. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
31. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion² and See Motion on St. Andrew’s School³,
32. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015⁴ and was further moved to mandatory disqualify Dec.28, 2015⁵ and thus no further action may be taken at this time beyond mandatory Disqualification.

² May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

³ August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

⁴ December 04, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

⁵ Dec 28, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015.%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips and striking the improperly Noticed Hearing of Alan Rose and Ted Bernstein from the calendar, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 06, 2016

/s/Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 6th day of January, 2016.

By: /s/ Eliot Ivan Bernstein

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