

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

IN RE:

Case No. 502011CP000653XXXXSB

ESTATE OF SHIRLEY BERNSTEIN,

Deceased.

Division: IY

**RENEWED PETITION TO RE-CLOSE ESTATE AND FOR
DISCHARGE OF SUCCESSOR PERSONAL REPRESENTATIVE**

Ted S. Bernstein, as Successor Personal Representative, petitions this Court for the entry of an order re-closing this Estate and discharging the Successor Personal Representative, and in support thereof states:

1. After trial held on December 15, 2015, this Court upheld Shirley's Will and determined that Eliot Bernstein is not a beneficiary of the Will and Trust of Shirley Bernstein, but Eliot's three sons were beneficiaries, among others.

2. On March 1, 2016, this Court appointed a guardian ad litem to represent Eliot's three son's interests in Shirley's Trust because¹, "there is a conflict of interest between [Eliot] and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children."

3. On September 2, 2014, Successor Personal Representative petitioned to Re-Close Shirley's estate based on signed waivers, which was denied solely because Eliot rescinded his waiver and challenged Shirley's inventory.

4. Eliot now lacks standing to challenge Shirley's inventory or challenge any aspect of

¹All assets that the beneficiaries are entitled to from Shirley's Will has poured over into Shirley's Trust or Simon's Estate.

Shirley's estate because he is not a beneficiary and is not a guardian for a beneficiary's interests.

5. The initial Personal Representative, Simon L. Bernstein, fully administered this estate and Petitioned for a discharge, with signed (but un-notarized) waivers by all interested persons. §731.301, Fla. Stat. (See Exhibit "A")

6. Under her Will, admitted to probate, Shirley left all of her personal effects, jewelry, collections, furnishings, automobiles and all non-business assets to her husband, Simon, if he survived her, which he did. Shirley's residences were to go to Simon, but she had no residences other than property already in her trust. The remainder of her estate was to pour-over into the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Shirley Trust"). Simon was the sole beneficiary of the Shirley Trust while he was alive.

7. Shirley died on December 8, 2010. Sometime thereafter, Simon directly took possession and control of all assets of her estate, and indirectly took control of the Shirley Bernstein Trust's assets as the initial Successor Trustee and sole beneficiary during his lifetime.

8. On April 9, 2012, Simon signed a Petition for Discharge and his own Waiver form. By that time, Simon had completed the administration of Shirley's Estate and he wanted the Estate to be closed. Because the five children – Ted, Pam, Eliot, Jill and Lisa – were interested parties, Simon also sought a waiver from each of them. Based upon the request of their father, each of his children signed a Waiver. The Waivers were delivered to this Court, but initially were rejected for lack of a notary.

9. Regardless, the Estate remains open at this time and the Court has confirmed the nomination of Ted S. Bernstein as Successor Personal Representative under the terms of Shirley's Will (also upheld as part of the Final Judgment dated December 16, 2015).

10. The Successor Personal Representative has completed the necessary inventory and accounting of the re-opened Estate. While Simon was alive, he disposed of all assets (believed to be tangible personal property only) and resolved all claims (if any) which were presented. No assets were discovered by the Successor Personal Representative in the re-opened Estate.

11. There were no estate taxes due (Shirley died in 2010) and Simon had paid or caused to be paid all claims and expenses of administration. More than two years has passed since Shirley's death, so there can and will be no more claims. There currently is no reason for the estate to remain open.

12. Although this Court reopened the Estate, the Successor Personal Representative has possession of no assets and never has, and is aware of no liabilities. This was confirmed when the Successor Personal Representative conducted the final accounting and inventory of the estate. The Successor Personal Representative will never have any assets to distribute because there are no assets and anything which conceivably could have existed on the date of Shirley's death would have been transferred to Simon as her surviving spouse under the terms of her Will. Any such assets Simon retained as of his death would now be in Simon's estate.

13. This is the Successor Personal Representative's second motion to re-close this Estate. In an effort to reduce the legal expense in this Estate, which has no assets whatsoever, Ted S. Bernstein, as Successor Personal Representative, previously moved to re-close the Estate. At that time, this Court had not yet determined the validity of the Will or the Trust, which is the sole beneficiary of the Estate under the Will. Therefore, at that time, Eliot, as a surviving child of the Decedent, arguably had standing to object. Eliot did object, and this Court (at a time when Judge Colin was presiding) denied the Petition to Re-Close without prejudice.

14. Now, circumstances have changed. By Final Judgment dated December 16, 2015, this Court determined that the Will and Trust are valid. The Court later confirmed that ruling on February 1, 2016, in an Order determining that Eliot lacked standing to participate in this matter.

15. Under the Will and Trust, Simon Bernstein individually was the sole beneficiary with regard to tangible personal property, including furniture, jewelry, and other personal possessions of Shirley Bernstein. All other assets were to be distributed to The Shirley Bernstein Trust Agreement dated May 20, 2008.

16. Prior to his death, Simon Bernstein was serving as the personal representative of the Estate and as the sole trustee of the Trust. Simon Bernstein alone was entitled to possession and ownership of the tangible personal property, and he alone was entitled to control the Trust assets and was the sole beneficiary of the Trust, all during his lifetime. Before he died, Simon Bernstein signed documents sufficient to discharge him, waive an accounting, and close the Estate.

17. Although none of them are individually beneficiaries, each of his children likewise signed waivers, although Eliot has since withdrawn his. Notwithstanding the "belts and suspenders" approach in seeking waivers from Shirley's adult children, now that the Will and Trust have been construed, it is obvious that none of the children are beneficiaries, directly or indirectly, of the Estate of Shirley Bernstein or her Trust. Moreover, the persons who are the ultimate beneficiaries of The Shirley Bernstein Trust, a Trust created for the benefit of each of her ten grandchildren, are controlled by four of her children and the Guardian *Ad Litem* appointed to represent Eliot's children. All of those parties support and have agreed to the immediate re-closure of this Estate.

18. The Estate now seeks an order of this Court closing this Estate based upon the accounting and inventory completed by the Successor Personal Representative and the genuineness

of the Waivers signed while Simon was alive, coupled with Eliot's lack of standing. In addition, the Successor Personal Representative now has the full knowledge, consent, and approval of the direct beneficiary of the Estate (Ted S. Bernstein, as Successor Trustee of The Shirley Bernstein Trust), and all of the indirect beneficiaries (representatives of Shirley's ten grandchildren), the Personal Representative requests the Court immediately re-close the Estate, discharge the Personal Representative, and grant such other relief as is just.

WHEREFORE, the Successor Personal Representative respectfully requests the entry of an Order re-closing this Estate; discharging the Successor Personal Representative and releasing the surety on any bond which the Successor Personal Representative may have posted in this proceeding; and granting such other relief as it just.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

/s/ Ted S. Bernstein (see attached)

Ted S. Bernstein

Successor Personal Representative

Dated this 10th day of August, 2016.



CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached

Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission;

FedEx; Hand Delivery this 10th day of August, 2016.

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