

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

CASE NO. 502012CP004391XXXXNBIH
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**TRUSTEE'S MOTION TO (i) APPROVE COMPROMISE AND SETTLEMENT,
(ii) APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., J.A.B. AND J.O.B.,
AND (iii) DETERMINE COMPENSATION FOR GUARDIAN AD LITEM**

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 , and as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust"), moves the Court to approve the parties' settlement reached at mediation held on July 25, 2016; to appoint a Trustee for the three trusts created for Eliot Bernstein's children (and thereafter, to discharge the Guardian); and to determine the Guardian Ad Litem's fees, states:

1. On July 25, 2016, a mediation was conducted to address numerous issue involving this Estate and the related matters involving Shirley Bernstein's Estate and Trust.
2. In connection with certain issues in this Estate, the beneficiaries and trustees of certain trusts reached a settlement. The settlement:
 - a. resolves all questions concerning the validity and terms of The Simon Bernstein Trust;

b. agrees that trusts were created for each of Simon and Shirley Bernstein's ten grandchildren, and that each of those ten trusts will receive equal an distribution of Trust assets;

c. resolves all claims by and between the beneficiaries, significantly including a release of any claims of surcharge to be brought by certain beneficiaries concerning the conduct of Eliot Bernstein, which was not only adverse and destructive to the interests of his children, but was adverse and destructive to the interests of all ten grandchildren; and

d. confirm their agreement that:

(i) in light of their prior and extensive involvement in this case, the Mrachek Law Firm shall represent the Estate in the case of *Stansbury v. the Estate*, and are directed to have the issues resolved by the court in an expeditious manner; and

(ii) that Brian O'Connell as Personal Representative shall continue to represent the Estate in the Illinois litigation concerning insurance proceeds, and shall seek to enforce and continue the existing order requiring Stansbury to fund/advance the legal fees and expenses of that litigation.

3. The settlement is effectively immediately, and contingent only upon the affirmance by the Fourth District Court of Appeal of the pending appeals by Eliot Bernstein.

4. The Trustee and each of the parties to the settlement agreement believe that the settlement is in the best interests of the Trust and its beneficiaries.

5. The Guardian *Ad Litem* appointed by this Court to represent the interests of Eliot Bernstein's children, each of whom is a beneficiary of a trust created under the Bernstein testamentary documents, agrees that the settlement is in the best interests of Eliot Bernstein's

children. As part of this Motion, the Trustee requests that the Court determine and/or approve an hourly rate for the Guardian and approve an award to the Guardian, to be made in accordance with the prior order appointing the Guardian.

6. Finally, the Trustee requests the Court appoint a Trustee for the three trusts created for Eliot's children, as follows:

Trust created for the benefit of Joshua Bernstein under the Simon L. Bernstein Trust dtd 07-25-2012 (EIN: XX-XXXXXXX)

Trust created for the benefit of Daniel Bernstein under the Simon L. Bernstein Trust dtd 07-25-2012 (EIN: XX-XXXXXXX)

Trust created for the benefit of Jake Bernstein under the Simon L. Bernstein Trust dtd 07-24-2012 (EIN: XX-XXXXXXX)

(the "Eliot Children Trusts")

7. Each of the Eliot Children Trusts already exists, and has a federal tax identification number assigned to it. None of the children can serve as trustee, and none has an individual right to possess money. Instead, under Simon's Trust, all monies go into the Eliot Children Trusts, and Eliot is supposed to serve as trustee. However, back in 2013, Eliot failed and refused to open and account or accept distribution. And since then, his actions have been adverse and destructive to his children. Neither the Trustee nor the Guardian believe Eliot or Candice Bernstein should serve as trustee of the Eliot Children Trusts.

8. Moreover, the Guardian is not willing to serve in the capacity as permanent trustee of the Eliot Children Trusts, once they are funded as part of the settlement. Neither the Trustee nor the Guardian believe any institution would serve as trustee, given the limited size of the trusts and the history of persons dealing with Eliot Bernstein, including the recent struggle of Oppenheimer to

resign. It is not anticipated that the Eliot Children Trusts will be funded for at least six months, until the appeal is resolved.

9. Accordingly, the Trustee and the Guardian request that the Court retain jurisdiction to select and appoint a trustee to serve as trustee for the Eliot Children Trusts. To the extent a suitable trustee cannot be located, the Court may need to take further action with respect to these trusts. Upon the appointment of a trustee, the Guardian may be discharged.

10. Ted Bernstein, who already serves as Successor Trustee of Simon's and Shirley's Trusts, as well as the three trusts created by Simon for his own children, would be willing to serve in the role of trustee of the Eliot Children Trusts, for no fee whatsoever. Ted Bernstein does not believe anyone else would be willing to undertake this role. Further, he understands and acknowledges that he would only be fulfilling the wishes of his parents in protecting his three nephews. Ted Bernstein firmly believes that if these funds are simply given outright to Eliot Bernstein, he will use them for his own purposes. Moreover, Ted Bernstein already has demonstrated a willingness to stand up to Eliot Bernstein and not back down notwithstanding brutal and vicious internet attacks by Eliot Bernstein. Unlike a newcomer, there is little more Eliot could falsely publish about Ted Bernstein that already has not been falsely published. However, Ted Bernstein has no desire to serve in that capacity, unless Eliot and Candice Bernstein would consent.

11. To the extent the Court chooses a trustee, such person needs to agree to use the trust funds for the benefit of Eliot's Children, not for Eliot's benefit or to fund Eliot's crusade for justice.

WHEREFORE, Trustee requests that the Court grant this motion, approve the settlement, determine compensation for the Guardian, and thereafter dismiss this case, retaining jurisdiction

solely to enforce the settlement agreement and address implementation issues concerning the Guardian and the appointment of a trustee for Eliot Bernstein's children's trusts.

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 9th day of November, 2016.

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