

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

CASE NO. 4D16-3314

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2014CP003698 XXXX NB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.

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**APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE, RESPONSE  
TO APPELLANT'S AMENDED RESPONSE TO SHOW CAUSE  
ORDER OF DEC. 28, 2016 AND REQUEST FOR EXTENSION OF TIME**

Appellee, Ted S. Bernstein, as successor Trustee of the Shirley Bernstein Trust ("Trustee"), responds to *Amended Appellant's Response to Show Cause Order of Dec. 28, 2016 and Request for Extension of Time* filed by Appellant, Eliot Ivan Bernstein, and states:

1. This is a rather simple appeal concerning \$12,457. At the time of Simon Bernstein's death, he owned all of the furniture and personal property in an oceanfront condominium owned by the Shirley Bernstein Trust.<sup>1</sup> When the Trust later sold the condominium, the then-serving personal representatives of Simon's Estate agreed that most of the furniture and personalty in the condominium could be included in the real

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<sup>1</sup> A reputable third-party appraisal company valued all of the personalty in the condominium at \$14,865 as of the date of death.

estate sale, rather than paying someone to move and store it, with the understanding there would be an "even-up" later to compensate the Estate.

2. After the initial personal representatives resigned, Brian O'Connell was appointed as successor Personal Representative. The Trustee and Mr. O'Connell, as Personal Representative, agreed to "even up" the proceeds from the condominium sale. By reviewing two appraisals, one before the sale (see footnote 1) and one after the sale, it was easy to determine which items remained and which items presumably had been sold. No one ever objected to either of the third-party appraisals, or offered any counter-evidence of value.

3. The Personal Representative and the Trustee agreed that the Trust would pay the Estate the full appraised value of the items sold, which totals \$12,457.

4. The parties moved the probate court for approval of their agreement. No one objected at the hearing, and no one presented any alternate valuations of the property. The probate court entered an Order approving this agreement, and the trustee delivered a check to the personal representative.

5. Eliot Bernstein now appeals the Order approving this agreement. In doing so, he is challenging the business judgment of Mr. O'Connell as personal representative. (Eliot has no standing to challenge the business judgment of the Trustee, because he is not a beneficiary of the Trust.) So the only issue on this appeal

is: "was it within the business judgment of Brian O'Connell to agree to accept payment of \$12,457 as the 'even-up' for the agreement to sell certain personal property?" The briefing of this very narrow issue is not complex and should not have taken an extended period of time.

6. Moreover, Eliot Bernstein has demonstrated in this Court, in a series of related cases (*see e.g.* 4D16-1449), a pattern of delay and stagnation designed not to challenge orders, but simply to create expense and delay. As has been the Trustee's position in other appeals, Eliot Bernstein has not established good cause or excusable neglect – he is fully aware of the Court's orders and deadlines. The pending Order to Show Cause invited him to file an Initial Brief within 10 days, which would automatically discharge the Order. Instead, he filed a response and motion asking for yet more time – an 45 additional days.

7. The Trustee requests that the Court dismiss this appeal or, if inclined to grant an extension, limit any extension to no more than 15 to 30 days and conditioned upon the Court specifying that if no Initial Brief is filed within that time, the appeal will be dismissed. There must be a closure to these estates and until all of the appeals are resolved, final orders cannot be entered and final distributions cannot be made.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been served by e-mail on all parties listed on the attached service list, this 11th day of January, 2017.

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