

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM
BEACH, FL 33401

CASE NO.: 4D16-2249

L.T. No.: 502014CP002815XXXXNB

ELIOT IVAN BERNSTEIN v. OPPENHEIMER TRUST CO. OF
DELAWARE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

**APPELLANT’S MOTION FOR REHEARING AND CLARIFICATION
UNDER RULE 9.330 AND REINSTATING THE APPEAL**

1. I am the Appellant in this case acting pro se.
2. I make this motion for Rehearing under Florida Rules of Appellate Procedure 9.330 and alternatively for clarification and a written decision under this rule as respectfully, this Court has overlooked or misapprehended the facts and - or misapplied the law.
3. This Court issued an Order on Jan. 11, 2017 Dismissing the Appeal Ordering that “that appellee’s December 13, 2016 motion to dismiss is granted, and this appeal is dismissed. Appellant’s December 2, 2016 motion for extension of time is denied as moot.”
4. As this Motion for Rehearing, Clarification and seeking a written opinion is filed within 15 days, it is timely.

5. As I showed this Court in Par. 2 of my Dec. 2, 2016 Motion for Extension of Time, “2. I have previously moved this Court for extensions and stay based on serious ongoing and potentially life threatening medical issues and again move at least for an Extension of Time to file the Initial Brief on the Merits on these grounds as well having again received Licensed Doctor’s orders to avoid stress until Dec. 15, 2016 and follow-up care. See Exhibit 1 - Dr. Letter”. See, 4th DCA Docket Dec. 2. 2016 filing.
6. Further, as I showed this Court in Par. 5, “ The circumstances which have not changed in the Lower Tribunal are that Ted Bernstein by and through his attorney has continued to mislead the Lower Tribunal in relation to motions filed to close the Estate of Shirley Bernstein and other motions in the other cases and further continued to make false and fraudulent statements claiming that Guardian Diana Lewis was appointed in certain cases where she was in fact not appointed”.
7. As I had shown this Court in my prior motion for an extension of time filed on Oct. 25, 2016 in addition to Doctor’s Orders to avoid stress, in Paragraphs 6-10 I showed this Court, “6. There is overwhelming Merit to my Appeal herein. 7. The attorneys opposing my Extensions are tied up together in Fraud upon the Court and upon information are acting in concert and “coordination” by the “pile on” method of repeatedly bombarding me with multiple filings at once or a day or so apart, having received in excess of 8 separate filings total from attorneys Alan

Rose and Steven Lessnee in the last 2 days alone. 8. The attorneys opposing my Extensions, primarily Alan Rose and Stephen Lessne, were brought into the cases by attorneys Tescher and Spallina, Ted Bernstein's former counsel, who were also fiduciaries in these matters and who have admitted to fraud on the court by their law firm in these matters that directly benefited Ted and his family and who both recently signed consents with the SEC for insider trading, including Spallina pleading guilty to criminal misconduct in a separate criminal complaint. Spallina has also admitted in the lower court to committing other crimes in these matters including mail and wire fraud and altering beneficiaries of the Shirley Bernstein Trust document that are being investigated ongoing with state and federal authorities. 9. The Pattern and Practice of Fraud and Fraud using the court in these matters is what has cost all delays and expenses and interference with expectancy and damages to multiple parties involved as is fully evidenced in the record. 10. The history of all the cases and related cases on appeal not only shows fraud upon the Court but will show and does show substantial periods of time, gaps of time as it were, where no action has occurred in the cases whatsoever and thus those opposing my extensions and determinations on the Merits have no showing available to justify their now rushed position nor shown any actual harm or prejudice especially caused in substantial part if not all by such attorneys' own conduct." See, 4th DCA Docket Oct. 25, 2016 filing.

8. This Court has been called upon to perform its mandatory duties to remove fraud upon the Court and fraud in the proceedings and throughout this and the various related appeals, **neither attorney Alan Rose nor Steven Lessnee, on par with their modus operandi have ever even DENIED the Fraud and yet this Court and the Courts below, until now new Judge Scher who has yet to act, have simply let the proceedings continue without addressing the Fraud even where the Fraud is not even Denied.**
9. Paragraph 5 of my Dec. 2, 2016 Motion for Extension of time showed **Fraud** by attorney Rose with specificity and particularity as follows, “and further continued to make false and fraudulent statements claiming that Guardian Diana Lewis was appointed in certain cases where she was in fact not appointed” and yet attorney Rose did not Deny the fraud but this Court just breezed along as if it did not exist nor properly contemplate the difficulties and delays and hardships caused to Appellant in repeatedly addressing Filings and proceedings ripe in fraud and thus this Court should have granted the Extension of Time and should now do so on Re-hearing.
10. Fraud upon the Court and throughout proceedings cannot be considered the “norm” although it has been in these cases and thus under law is tantamount to extraordinary circumstances which have been overlooked and thus this motion

for Rehearing should now be granted and the Appeal Reinstated and the Motion for Extension granted.

11. This Court should further take Judicial Notice of the filings in the related Appeals where detailed description of the numerous motions and actions to respond to have been specified in detail to this Court creating the need for Extension which was applied for herein and also further detailing fraud in the proceedings and thus grant the Rehearing and Reinstate the Appeal.

CLARIFICATION

12. Alternatively, this Court should grant clarification and issue a written decision demonstrating how fraud upon the Court and repeated fraud filings are no longer to be addressed by Courts in the performance of its mandatory duties and obligations and such written decision and opinion will not only benefit this case but the public at large.

WHEREFORE, it is respectfully prayed for an Order granting Rehearing and Reinstating the Appeal herein and alternatively granting Clarification under Rule 9.330 with leave to further brief on rehearing based upon such clarification by this Court and for such other and further relief as may seem just and proper.

Respectfully submitted,

Dated: January 26, 2017

/s/ Eliot Ivan Bernstein
Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the within has been served upon all parties on the attached Service List by E-Mail Electronic Transmission, Court ECF on this 26th day of January, 2017.

Dated: January 26, 2017

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