

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

IN RE:

Case No. 50 2012 CP 004391 NB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

**MOTION TO SET HEARING ON TRUSTEE'S OBJECTIONS
TO NOTICE OF PRODUCTION FROM NON-PARTY**

Comes now William Stansbury ("Stansbury"), by and through undersigned counsel, and moves this Court to set a hearing on the Trustee's Objections to his Notice of Production from Non-Party, and states as follows:

1. In preparation for the hearing (scheduled for February 19, 2017) on Stansbury's Motion to Disqualify Alan Rose and the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, from representing the Estate of Simon Bernstein, Stansbury served on January 12, 2017, his Notice of Production from Non-Party to Alan Rose and Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss.


2. On January 27, 2017, the last possible day for objecting, Objections were filed.

3. A copy of the Trustee's Objection to the Notice of Production from Non-Party is attached hereto as **Exhibit "1,"** with a copy of the subpoena attached to the objection as **Exhibit "A"**.

4. Counsel for Stansbury attempted to get these Objections set on motion calendar but has been unable to do so. The Notice of Production from Non-Party goes directly to Stansbury's burden to show that Alan Rose and the law firm of Mrachek, Fitzgerald, Rose,

Konopka, Thomas & Weiss have a conflict of interest in representing the Estate of Simon Bernstein. Specifically, the documents sought will show that Alan Rose and his law firm represent Ted Bernstein as a Plaintiff in an action whereby he is suing the Estate of Simon Bernstein. Alan Rose and his law firm now seek to represent the Estate that his client is presently suing.


WHEREFORE, William Stansbury requests this Honorable Court to set a hearing on Motion calendar or at a 15-minute special set hearing as soon as possible to rule on the Objections to the Notice of Production from Non-Party.


Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., Mrachek, Fitzgerald Rose, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, lisa@friedsteins.com, 2142 Churchill Lane, Highland Park, IL 60035; Jill Iantoni, jilliantoni@gmail.com, 2101 Magnolia Lane, Highland Park, IL 60035, on this 31st day of January, 2017.

PETER M. FEAMAN, P.A.
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mkoskey@feamanlaw.com

By: 
Peter M. Feaman
Florida Bar No. 0260347

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,
_____ /

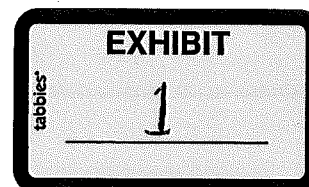
TRUSTEE'S OBJECTION TO NOTICE OF PRODUCTION FROM NON-PARTY

Ted S. Bernstein, Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Trustee"), pursuant to Fla. R. Civ. P. 1.410, files his Objection to William E. Stansbury's Subpoena Duces Tecum Without Deposition.

1. On January 12, 2017, William E. Stansbury ("Stansbury"), filed his Notice of Production from Non-Party to Alan Benjamin Rose ("Rose"), and attached a Subpoena Duces Tecum without Deposition to Rose (the "Subpoena"). A copy of the Subpoena is attached as Exhibit "A."

2. Trustee objects to the Subpoena because the Subpoena purports to seek documents and information which are: (1) not relevant nor reasonably calculated to lead to admissible evidence; (2) clearly covered by the attorney-client privilege and the attorney work-product doctrine, and violate the right of the Trustee under the Simon L Bernstein Amended and Restated Trust Agreement dated 7-25-12; (3) unduly burdensome and designed to harass the Trustee and the Trustee's counsel, and simply preparing a privilege log would entail a large, unreasonable and unnecessary expense.

3. In addition, it appears that Stansbury lacks standing in this estate to seek the disqualification of the Estate's counsel defending against Stansbury's claims, and therefore lacks standing to seek such discovery and information. This lack of standing is more evident given the



fact that the Estate is independently represented by counsel in Illinois, under the direction of Brian O'Connell as Personal Representative, with court-ordered funding by Stansbury; thus the Illinois case is being handled as it should by the Estate's Personal Representative. The Estate Personal Representative is handling Stansbury's claim independently of the Illinois litigation, and at the request of the direct and indirect beneficiaries, and to save expenses, has selected the Mrachek firm and waived any potential conflict. As the only personal complaining is Stansbury, whose interests are directly adverse to the Estate in Florida, and potentially expose the Estate to fee and cost expense in Illinois, the motivation is obvious. The only adversity in this case is between Stansbury, a potential claimant against the Estate, and the Trustee, the sole beneficiary. There is no conflict between the Trustee and the Estate, and to the extent the Trustee's service as trustee of a separate trust is relevant, that is acknowledged and permitted by Simon Bernstein in his Trust Agreement.

WHEREFORE, Trustee requests that this Court sustain his objection, prohibiting Stansbury from obtaining the issuance of the Subpoena to Rose, and any other relief this Court deems appropriate.

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 27th day of January, 2017.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
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(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com; mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST - CASE NO. 502012CP004391XXXXNBIH

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2753 NW 34th Street
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Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Pamela Beth Simon
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Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

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ADA & Mediations Services, LLC
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(561) 758-3017 - Telephone
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Guardian *Ad Litem* for
Eliot Bernstein's minor children,
Jo.B., Ja.B., and D.B.

Jill Iantoni
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Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

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Joelle A. Foglietta, Esq.
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IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

IN RE:

Case No. 502012CP004391XXXXNB

ESTATE OF SIMON
BERNSTEIN,
Deceased.


NOTICE OF PRODUCTION FROM NON-PARTY
(Florida Probate Rule 5.080 & Fla.R.Civ.P. 1.351)

YOU ARE NOTIFIED that, ten (10) days from the date of service of this Notice, if service is by delivery, or fifteen (15) days from the date of service if service is by mail, and if no objection is received from any party, the undersigned will issue, or will apply to the Clerk of this Court for issuance of, the attached Subpoenas directed to the following:

1. **Alan Benjamin Rose**
Mrachek Fitzgerald Rose Konopka Thomas Weiss
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
2. **Records Custodian of:**
Mrachek Fitzgerald Rose Konopka Thomas Weiss
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401

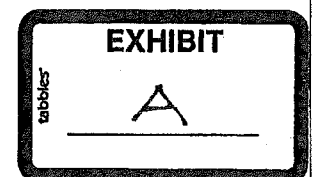
who are not parties, and whose addresses are listed above, to produce the items listed at the time and place specified in the Subpoena.

Respectfully submitted,

By: 
Peter M. Feaman

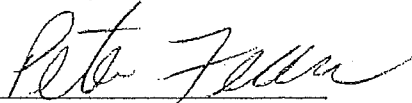
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to: Alan Rose, Esq., Mrachek, Fitzgerald Rose, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL



33434, iviewit@iviewit.tv; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Lisa Friedstein, lisa@friedsteins.com, 2142 Churchill Lane, Highland Park, IL 60035; Jill Iantoni, jilliantoni@gmail.com, 2101 Magnolia Lane, Highland Park, IL 60035, on this 12th day of January, 2017.

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mkoskey@feamanlaw.com

By: 
Peter M. Feaman
Florida Bar No. 0260347

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

IN RE:

Case No. 502012CP004391XXXXNB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

TO: **Alan Benjamin Rose**
Mrachek Fitzgerald Rose Konopka Thomas Weiss
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401

YOU ARE COMMANDED to appear at the offices of **Peter M. Feaman, P.A., 3695 W. Boynton Beach Blvd., Suite #9, Boynton Beach, FL 33436** on **February 10, 2017 at 10:00 a.m.** and to have with you at that time and place copies of all of the following documents:

Definitions:

- A. "Chicago Litigation" means the litigation case number 13CV3643 in the U.S. District Court for the Northern District of Illinois and case number 2013L003498 in the Circuit Court of Cook County, Illinois.

DUCES TECUM:

1. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Ted Bernstein from October 2, 2012 to the current date regarding the Chicago Litigation.
2. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Ted Bernstein, as Trustee to the purported Trust, from October 2, 2012 to the current date regarding the Chicago Litigation.
3. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and John M. O'Halloran, from October 2, 2012 to the current date regarding the Chicago Litigation.
4. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Alexander D. Marks, from October 2, 2012 to the current date regarding the Chicago Litigation.

5. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Adam M. Simon, from October 2, 2012 to the current date regarding the Chicago Litigation.
6. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Glenn E. Heilizer, from October 2, 2012 to the current date regarding the Chicago Litigation.
7. Correspondence, emails, postal mail, or any and all other type of written communication between Alan B. Rose and Frederic A. Mendelsohn, from October 2, 2012 to the current date regarding the Chicago Litigation.

The documents will be inspected and may be copied at that time. You will not be required to surrender the original documents. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

If you fail to:

- (1) appear or furnish the records at the time and place specified instead of appearing; or
- (2) object to this subpoena,

you may be in contempt of court. You are subpoenaed by the attorney whose name appears on this subpoena, and unless excused from this subpoena by the attorney or the court, you shall respond to this subpoena as directed.

NOTE: *You may mail or deliver the copies of the requested records to the attorney whose name appears below and thereby eliminate your appearance at the time and place specified.*

Dated on _____, 2017.

Issued by: _____
PETER M. FEAMAN, ESQ.
FOR THE COURT

PETER M. FEAMAN, P.A.
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