

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

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**TRUSTEE'S SUPPLEMENTAL SUBMISSION TO COURT REGARDING
MOTION TO VACATE IN PART ORDER PERMITTING RETENTION
OF MRACHEK FIRM [DE 497] AND MOTION TO DISQUALIFY [DE 508]**

Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust ("Trustee"), submits his supplemental materials in connection with the hearing on February 16, 2017, on William Stansbury's Motion to Vacate [DE 497] and the Motion to Disqualify [DE 503].

Both Motions are filed by a claimant, Stansbury, who is suing the Estate in an independent action seeking millions of dollars in damages. Stansbury seeks to prevent the Estate from retaining the counsel chosen by the Personal Representative and the beneficiaries to defend against Stansbury's claims. There is absolutely no merit to the Motion, as explained in the *Omnibus Response* [DE 507; Tab 5 in the Binder previously provided] and the *Amended Motion for Sanctions Pursuant to Florida Statute §57.105 Against William Stansbury and Peter Feaman, Esq.* [DE 526]

In essence, Stansbury as the Plaintiff is trying to choose who can represent the Defendant Estate against from Stansbury's claims. Rather than have the Estate defended by its chosen counsel – lawyers who already have full knowledge of the facts and evidence.¹ ***Most importantly, the Mrachek Firm has never represented Stansbury in anything – so he has no reason to complain.***

¹ Mrachek has been involved in defending Stansbury's claims since March 2013, representing most of the other defendants, handling all aspects of the litigation: interviewing witnesses; document production; motion practice, winning the dismissal of any derivative claims; deposing Stansbury; preparing for trial; conducting mediation. Indeed, the interim Curator appointed by this Court confirmed in a Motion for Stay that the Mrachek Firm's legal services to the other defendants enabled him to ***not retain separate counsel*** for the Estate, thereby saving the Estate from incurring fees. [Case 502012CA0013933 DE 215]

The Motions seeking disqualification are procedurally and substantively improper

First, Stansbury has no standing to object to the Estate's retention of the Mrachek Firm.

Second, Mrachek Firm was approved as counsel for the Estate on September 7, 2016. As of that time, any limited involvement in the Illinois case, such as attending the one deposition of Ted Bernstein on May 6, 2015, was over. Under Rule 4-1.9, only the former client's consent is necessary. There is no doubt that Ted Bernstein wants Mrachek to represent the Estate, and consents to that. So there is absolutely no issue here.

Third, even if some representation were ongoing, under Rule 4-1.7, the representation of Ted Bernstein as Trustee in an Illinois insurance interpleader proceeding is not "directly adverse" to the Estate. Mrachek is not acting as an advocate in the Illinois case, and has not appeared as counsel of record for anyone. In that Illinois case, the Estate is represented by one Chicago law firm and the opposing party by another Chicago law firm.

Nevertheless, if the Court is concerned there is or may be an actual or potential conflict of interest, all relevant persons have consented and waived any conflict. The comments to Rule 4-1.7 provide, in relevant part:

Conflicts in litigation

. . . . Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. **However, there are circumstances in which a lawyer may act as advocate against a client.** For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise **in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation.**

Here, both "clients" consented and waived any conflict of interest. The PR, Brian O'Connell, signed a written Statement acknowledging (a) there is no conflict and (b) if there is any conflict, he

would waive that conflict to allow the Estate to retain the Mrachek Firm, thereby reducing expenses and complying with the beneficiaries' wishes. (Attached as Exhibit "1")

Fourth, in deciding this issue this Court should not lose sight of the fact that this disqualification motion is brought by the *opposing party* who is using the Rules of Professional Conduct as a *procedural weapons* (exactly what the Rules warn against). In doing so, Stansbury is seeking to either exert control over this relatively modest estate,² or drive up the Estate's costs of defending his multi-million dollar lawsuit. Or, he is simply trying to get rid of the two people best positioned to defend his case – Ted Bernstein and Alan Rose, Esq. of Mrachek.

Conclusion

For more than four years, Stansbury has been trying to exert control over the administration, having opposed the PR and the Trustee on numerous issues, and having already tried and failed to remove the Trustee. The goal in retaining Mrachek was to lower expenses given the firm's prior knowledge and get the Stansbury case tried as soon as possible. Stansbury already is defeating that by forcing money to spent on this attempt to disqualify the Estate's counsel.

To assist the Court in preparing for the hearing, the Trustee submit the following supplemental materials:

1. *PR's Statement of Its Position That There Is No Conflict and His Waiver of Any Potential Conflict;*
2. Highlighted copies of Rule 4-1.7 and 4-1.9;

² The Inventory filed by the current Personal Representative, Brian O'Connell, lists the total assets of the Estate of Simon L. Bernstein at \$1,121,325.51. Removing the illiquid assets, the Estate now has only a few hundred thousand dollars in cash, and the remaining assets are of dubious value. Just defending against Stansbury's claim may consume most of the remaining Estate assets (other than the Estate's potential claim against Stansbury to recover fees).

3. Email to and from Stansbury's counsel dated December 22, 2016, in which Trustee's counsel provided the PR's Waiver and additional information and requesting that Stansbury carefully reconsider his position, and Stansbury's counsel's response four minutes later declining that request;

4. Copy of the Amended Motion for 57.105 Sanctions filed against Stansbury and his counsel.

For the reasons expressed in the Omnibus Response, this Supplemental Submission, and the attachments, the Motion seeking to disqualify the Mrachek Firm has no merit, and should be denied.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Supplemental Submission has been served on all parties on the attached Service List, specifically including counsel for William Stansbury, by E-mail Electronic Transmission, this 9th day of February, 2017.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

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

SERVICE LIST

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Tel / (561) 886-7628 - Cell
(561) 245-8644 - Fax
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Tel / (561) 833-0867 - Fax
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

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

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Tel / (561) 734-5554 - Fax
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Tel / (561) 241-2330 - Fax
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Diana Lewis, Esq.
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 - Tel
Email: dzlewis@aol.com
Guardian *Ad Litem* for Eliot Bernstein's minor
children, Jo.B., Ja.B., and D.B.

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Tel / 561-833-4209 - Fax
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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

IN RE:

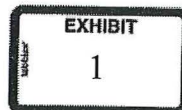
CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**PR'S STATEMENT OF ITS POSITION THAT THERE IS NO CONFLICT
AND HIS WAIVER OF ANY POTENTIAL CONFLICT**

I, Brian O'Connell, am the court-appointed Personal Representative ("PR") of The Estate of Simon L. Bernstein ("Estate"). Based upon the Will upheld during a probate trial conducted last December, resulting in a Final Judgment dated December 16, 2015, Simon Bernstein's children are the named devisees of certain personal property, but the sole residuary beneficiary of the Estate is the current trustee of the Simon L. Bernstein Amended and Restated Trust dated July 25, 2012 ("Trust"). That role is currently being fulfilled by Ted S. Bernstein, as Successor Trustee ("Trustee").

There are certain persons who have asserted potential claims against the Estate. The largest such claim is an independent action styled *William E. Stansbury, Plaintiff, v. Estate of Simon L. Bernstein and Bernstein Family Realty, LLC, Defendants*, in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, Case No.: 50 2012 CA 013933 MB AN (the "Stansbury Lawsuit"). In that action, Stansbury is suing the Estate for more than \$2.5 million, asserting claims for breach of oral contract; fraud in the inducement; civil conspiracy; unjust enrichment; equitable lien; and constructive trust. Each of these claims arises from Stansbury's employment with and involvement in an insurance business in which the principal shareholders were Ted Bernstein and Simon Bernstein.



The Stansbury Lawsuit was filed in July 2012, while Simon was alive. After Simon died, the Estate was substituted as the party defendant, and the former personal representatives hired counsel to defend the Estate. The primary defendant in that action was LIC Holdings, Inc. ("LIC"), along with its wholly-owned company, Arbitrage International Management, LLC, f/k/a Arbitrage International Holdings, LLC ("AIM"). Stansbury also maintained claims against the Shirley Bernstein Trust Agreement Dated May 20, 2008 ("Shirley Trust"), and Ted S. Bernstein, Individually ("Ted").

The law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. ("Mrachek") served as counsel for LIC, AIM, Shirley Trust and Ted Mrachek beginning in April 2013, formally appearing on April 15, 2013. As I was not appointed PR until sometime in July of 2014, I had no involvement or knowledge of this matter at that time.

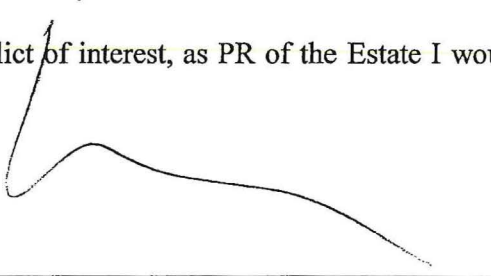
~~I have been advised that Mrachek represented those defendants and the position taken is not in conflict or adverse to the Estate's position. After mediation in June 2014, LIC, AIM, Shirley Trust and Ted settled with Stansbury. The Estate, then under the control of a Curator, did not settle with Stansbury. After my appointment, to avoid unnecessary expense, settlement efforts were made. Those efforts, including through a mediation held on July 25, 2016, were unsuccessful.~~

Some of the direct and indirect beneficiaries of the Estate I am administering advised me, in light of the Mrachek firm's prior and extensive involvement in the Stansbury Lawsuit, the beneficiaries wanted Mrachek to represent the Estate in the Stansbury Lawsuit. I agreed to that request, and agreed that Mrachek was retained to represent the Estate.

Additionally, I agreed to Trustee, Ted, being appointed to serve as administrator ad litem with regard to overseeing the defense of the Estate in the Stansbury Lawsuit for at least three two reasons: (i) Ted agreed to serve in that role for no additional compensation, whereas any time I spend will cost the Estate a reasonable fee for my services; (ii) Ted has direct knowledge of the facts and circumstances surrounding the Stansbury lawsuit, because he was part of LIC and AIM at the relevant time, he was Simon's son, and he was extensively involved in the Stansbury Lawsuit already as a defendant and as a corporate representative of LIC and AIM; (iii) I have no personal knowledge or involvement in this matter; and (iv) there is no reason to believe Mrachek and Ted will not adequately and vigorously defend the Estate's interests.

It is also in the best interest of the Estate (not only the beneficiaries but any creditors and claimants with the possible exception of Stansbury) to have the Stansbury Lawsuit resolved as quickly and efficiently as possible, because this Estate administration must remain open and ongoing until the Stansbury Lawsuit is resolved, and the expenses of defending the claim will cost the Estate money and time until the case is finally determined.

To the extent there is a waivable conflict of interest, as PR of the Estate I would waive any such conflict.



BRIAN O'CONNELL, Personal Representative