

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 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

**PETITION FOR APPOINTMENT
OF ADMINISTRATOR AD LITEM**

COMES NOW, William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion for Appointment of Administrator Ad Litem and in support states as follows:

I. Stansbury has standing to bring this Petition

1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury’s lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in this Court.

3. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor to an estate is an “interested person” and has standing in a proceeding to approve the personal representative’s final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4th DCA 2004). *See also, Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an “interested person” under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.)

6. Stansbury is therefore an “interested person” entitled to file and advance this Petition for Appointment of Administrator Ad Litem.

II. The Life Insurance Litigation

7. At the time of Simon Bernstein’s death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company (“Heritage”). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the “Insurance Trust”).

8. Robert Spallina, one of the now-resigned Co-Personal Representatives, submitted a claim form to Heritage on behalf of the alleged Insurance Trust for the benefit of the grown

children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “1,” attached.) If the alleged Trust instrument cannot be found and the beneficiaries of the Trust cannot be established, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay the devisees and creditors of the Estate. The devisee of the Estate is the Simon Bernstein Trust. The beneficiaries of the Simon Bernstein Trust are the grandchildren of Simon Bernstein, not the grown children of Simon Bernstein.

9. Spallina represented that he was “Trustee” of the Insurance Trust in an effort to collect the insurance proceeds for the benefit of the grown children of Simon Bernstein, and to circumvent the Estate.

10. Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois, and the case was subsequently removed to Federal Court. (The “Life Insurance Litigation”) See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) (A copy of the original Complaint filed in state court is attached as Exhibit “2.”) There, Ted Bernstein represented to the court that he was the trustee of the Insurance Trust, even though the Trust has never been located.

11. The Estate of Simon Bernstein is not a party to the action, even though the Estate will clearly be affected by the outcome of the litigation.

12. The current parties in the Life Insurance Litigation will not adequately represent the interests of the Estate. The Plaintiff Trust and the grown children of Simon Bernstein are

advocating that the Insurance Trust exists and that the Simon Bernstein grown children are the proper beneficiaries. If they prevail, the life insurance proceeds will be paid directly to the grown children of Simon Bernstein, circumventing the Estate. The life insurance proceeds would then be unavailable to pay devisees (the grandchildren of Simon Bernstein as beneficiaries of his trust) and creditors of the Estate. None of the current parties to the action in Illinois will advocate or are advocating that the life insurance proceeds are or should be payable to the Estate and made available to pay the devisees and creditors.

13. As a consequence of the foregoing, it is imperative that this Court appoint an Administrator Ad Litem to represent the interests of the Estate to intervene in the Life Insurance Litigation. At present, there is no Personal Representative representing the interests of the Estate as this Court recently appointed a Curator. As such, the interests of the Estate will go unrepresented if an Administrator Ad Litem is not appointed.

14. Section 733.309, Fla. Stat. (2013) gives this Court the authority to appoint an Administrator Ad Litem under these circumstances. That statute specifically states:

733.308. Administrator ad litem. When an estate must be represented and the personal representative is unable to do so, the court shall appoint an administrator ad litem without bond to represent the estate in that proceeding.

15. Additionally, Fla. Prob. R. 5.120 states:

Rule 5.120. Administrator Ad Litem and Guardian Ad Litem

(a) Appointment. When it is necessary that the estate of a decedent...be represented in any probate...proceeding and there is no personal representative...or the necessity arises otherwise, the court may appoint an administrator ad litem...without bond or notice for that particular proceeding....

16. There currently is only a curator of the Estate of Simon Bernstein. Additionally, the Life Insurance Litigation is a matter that requires that the Estate intervene in order to protect

its interests and the interests of its devisees, Simon Bernstein's grandchildren and creditors of the Estate.

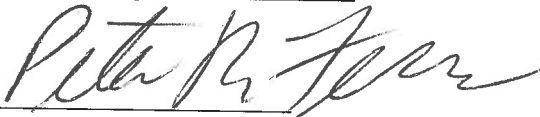
WHEREFORE, Interested Person, William E. Stansbury moves this Honorable Court for an Order Appoint an Administrator Ad Litem to protect the interests of the Estate of Simon Bernstein in Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.), together with any other relief this court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com on this 14th day of March, 2014.

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