

1. 8/10/16 MASTER DRAFT Response to 20160810 Motion to Ratify and Confirm Appt of Ted as Successor Trustee of Trust which is sole Beneficiary of Estate.
 - a. "MOTION TO RATIFY AND CONFIRM APPOINTMENT OF TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF TRUST WHICH IS SOLE BENEFICIARY OF THIS ESTATE"
 - i. Trust is not sole Beneficiary of the Estate
 - b. "The Court having determined who are the qualified beneficiaries and having appointed a Guardian ad Litem to represent the interests of Eliot's children, the qualified beneficiaries of the Trust unanimously have agreed"
 - i. No consent from Josh and Jake and Guardian cannot represent their interests, her consent was predatorily gained.
 - ii. No Construction hearing was held in Simon Estate or Simon Trust, Rose only had Validity Hearing in Shirley's Trust case for Estate and Trust of Simon.
 - c. "Finally, to remove any possible doubt, the Successor Trustee and all qualified beneficiaries ask the Court to confirm the appointment and/or formally appoint Ted S. Bernstein"
 - i. Again no true consent of all
 - d. "Ted Bernstein is eligible to serve and, indeed, was appointed and is serving as the sole successor trustee of his mother's trust, which benefits the same ten people."
 - i. There are not 10 beneficiaries of Shirley's trust. Eliot, Jill and Lisa are only beneficiaries and/or their 6 children. Simon's Power of Appt only applies to Family Trust and Marital Trust and at this time they do not exist.
 - e. "Regardless, to avoid any issue, reduce expenses and put to rest for all time any concerns raised as to Ted S. Bernstein's service as Successor Trustee, the beneficiaries of the Trust unanimously have agreed to ratify and confirm the appointment of Ted S. Bernstein."
 - i. They do not have consent of Eliot and his adult kids and no signed consent forms from anyone.

- f. “The Court having determined who are the qualified beneficiaries and having appointed a Guardian ad Litem to represent the interests of Eliot's children, the qualified beneficiaries of the Trust unanimously have agreed to appoint Ted S. Bernstein as successor trustee, nunc pro tunc February 3, 2014.”
 - i. There has been no Construction hearing of documents, all false and orders are baloney and do not state what Rose claims.
 - ii. No consent from all beneficiaries
 - g. “Finally, to remove any possible doubt, the Successor Trustee and all qualified beneficiaries ask the Court to confirm the appointment and/or formally appoint Ted S. Bernstein”
 - h. “WHEREFORE, Ted requests that this Court: (a) accept and approve the qualified beneficiaries' ratification and confirm the appointment of Ted S. Bernstein; (b) accept and approve the qualified unanimous agreement that Ted S. Bernstein be appointed as successor trustee”
2. November 28, 2016 Alan Rose Letter to Scher **“Bernstein Status Report for 11-29 Status Conference**
- a. “Judge Phillips brought order to chaos; determined after a trial who are the rightful beneficiaries of these estates and trusts;”
 - b. No determination was made after trial and the Order does not determine who the rightful beneficiaries are as it was not a Construction hearing it was a validity hearing and no Construction has been done to date.
 - c. The Power of Appt has never been heard to be valid and it is not since it only relates to a Limited Power over the Family Trust and the Marital Trust, which at this time do not exist.
 - d. “Judge Phillips first set a trial to determine the validity of the Wills and Trusts, which determined the proper beneficiaries.”
 - i. Not true, there was no construction to determine beneficiaries just hearing to validate. The Estate of Simon was abandoned at hearing by O’Connell.
 - e. “However, Stansbury and Eliot continue to disrupt and delay the orderly administration of Simon's Estate; are trying to influence the Simon Trust even though neither has standing on those issues...”

- i. Not true both have standing
- f. “Moreover, Eliot expected to be rich once his parents died. According to Eliot's court filings and testimony, he believed his parents' net worth was more than \$100 million, and he would inherit \$30 million more. Instead, he gets nothing. His children are beneficiaries, and do get 10% each, but Eliot has done all he can to destroy what little (perhaps \$3 million total) his parents left behind.”
- g. “The only other players who need specific mention are Simon's prior counsel. Those lawyers took some improper actions after Simon's death, but have been replaced and have suffered severe consequences. Indeed, there is a pending settlement between those lawyers and everyone else -Mr. O'Connell, as Simon's PR; Ted as Shirley's PR and Trustee of both trusts; the GAL and all beneficiaries..”
 - i. NOT ONLY WERE THEY SIMON’S COUNSEL but the crimes in Shirley’s Estate and Trusts were done by them acting as TED BERNSTEIN’S counsel. Ted brought into family, Ted has business relations and possible sexual relations with them.
- h. “The Final Judgment (on appeal) resolved that the beneficiaries are ten grandchildren and that Eliot has no standing”
 - i. Untrue the final judgment did not determine any of this as there still has been NO CONSTRUCTION hearing.
- i. “When Stansbury did not settle at the July mediation, the beneficiaries agreed to get the case tried quickly and by the Mrachek Firm,”
 - i. Beneficiaries did not agree this is mass fraud as Eliot and his adult children have not agreed to jack.
- j. “On behalf of the Trustee, who now speaks with a singular and clear voice on behalf of all of beneficiaries, the Court should not allow Stansbury or Eliot to cause further disruption.”
 - i. Untrue does not have consent of all beneficiaries
- k. “Eliot has been barred from participation in the Shirley matters, but may have some limited rights in Simon's estate because he filed a personal claim against Simon's Estate.”

1. "For example, the Final Judgment ruling that Eliot lacked standing would have ended the nonsense in a normal case, but this one is not normal."
3. Filing # 32030300 E-Filed 09/14/2015 05:18:25 PM "TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE"
 - a. "Introduction - The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel."
 - i. Eliot is a beneficiary in ALL documents that Judge Phillips ruled valid. No Construction hearing has been held to determine anything different.
 - b. "The sole reason for the lack of progress is their disinherited son, Eliot Bernstein."
 - i. Eliot is a beneficiary in Simon Estate and Shirley Estate and all other Trust documents of Simon and Shirley.
 - ii. Eliot was never disinherited by Shirley.
 - c. "If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts,"
 - d. "The surviving spouse was the sole successor trustee and beneficiary for life, and was granted a limited power of appointment. Simon, as the survivor, had the sole and absolute right to do whatever he pleased with his own assets, and also possessed a limited power to appoint the assets remaining in the Shirley Trust to any of Shirley's lineal descendant or their spouse."
 - i. Shirley's lineal descendants exclude Ted Pam and their children.
 - ii. Simon's LIMITED POWER OF APPT only applies to assets in the Family Trust and Marital Trust, which according to Ted and his counsel were never created, therefore Simon had no power to change any of Shirley's IRREVOCABLE beneficiary class upon her death. Simon despite any desires of his could never change Shirley's beneficiaries and Rose's statements contradict his statements to PBSO, Spallina's statements to PBSO that Shirley's beneficiaries were Eliot, Jill and Lisa only.

- e. “When Shirley died, Simon was PR, successor Trustee, and sole beneficiary of her estate and trust.”
 - i. Simon was not a beneficiary of Shirley’s Trust, he was the Trustee with limited rights under a Family and Marital Trust that according to Ted’s former counsel were never created and were never produced at Validity hearing.
- f. “Ted is not a beneficiary of any of these trusts and estates, and stands to gain nothing personally. Indeed, none of the five children are beneficiaries, as all of their parents’ wealth was left to ten grandchildren.”
 - i. Ted is a beneficiary of the Shirley Estate and Simon Estate, along with the other children.
 - ii. No Grandchildren have ever received a notice of administration for Estates and Trusts of Simon and Shirley Bernstein.
 - iii. Only 6 of 10 grandchildren can be beneficiaries of both Simon and Shirley’s Estates and Trusts as Ted, Pam and their 4 children are considered PREDECEASED in all versions of the trusts.
 - iv. The grandchildren are not beneficiaries of the Estates of either Simon or Shirley/
- g. “This is a tragedy of significant proportion to the ten grandchildren of Simon and Shirley Bernstein, the sole beneficiaries of their wealth.”
 - i. Wholly untrue
- h. “This case involves minor grandchildren and young adult grandchildren who are the sole beneficiaries of Simon and Shirley Bernstein – there should be nothing on the internet about this private civil matter. And, if it is not stopped, a Guardian no doubt will become the next victim, as might this Court in the event it should ever rule against Eliot on a significant matter. Also, the beneficiaries believe that Eliot’s threats are causing the successor PR, Brian O’Connell, to take steps which cause unnecessary expense, solely to appease Eliot.”
- i. “When Ted became successor trustee after his father’s death, there were two primary assets in the Trusts: (i) an oceanfront condo; and (ii) a single family residence which was his parents’ homestead. The condo was sold in an arm’s

length sale, through a highly-reputable real estate broker. Eliot continues to threaten some litigation to clawback the property, and refused to accept for his children the partial interim distribution the Trustee elected to make to each of the ten beneficiaries.”

- i. There are no 10 grandchildren beneficiaries of Shirley’s Trust.
 - ii. No Notice of Trust has been sent by Ted to any parties.
 - j. “To date, and despite the fact that he produced no evidence to support his assertion that the property was being sold too cheaply, and despite the fact that he is not a beneficiary of the trust,”
 - k. “(There are prior Waivers signed by all potential beneficiaries, including Eliot Bernstein, and in the past five-plus years, nothing new has been found.) In particular, because Simon outlived Shirley and was thus alive at the time of her bequests to him, Eliot is not a beneficiary of Shirley's estate. The belts and suspenders of getting a waiver from him, which he admittedly signed, should not overshadow the fact that the empty estate simply should be closed.”
 - i. What is a Potential Beneficiary, the Waiver says BENEFICIARY, the Notice of Admin lists Eliot as Beneficiary.
 - ii. Eliot is a beneficiary of Shirley’s Estate
 - l. “It is unclear if this is real or a game to him,⁹ but what is absolutely clear is: Eliot will not inherit any money, and his kids will not inherit enough to sustain his lifestyle.”
 - m. “Eliot lacks standing because he is not a beneficiary of either Simon's or Shirley's trusts.”
4. Filing # 44877594 E-Filed 08/05/2016 11:59:56 AM “TRUSTEE'S MOTION TO APPROVE RETENTION OF COUNSEL AND, TO APPOINT TED S. BERNSTEIN AS ADMINISTRATOR AD LITEM TO DEFEND CLAIM AGAINST ESTATE BY WILLIAM STANSBURY”
- a. “He has conferred with the beneficiaries of The Simon Bernstein Trust, including the Guardian Ad Litem, and all are in favor of Ted Bernstein directing the defense of the claim through the Mrachek-Law firm.”
 - i. Guardian does not represent 2 children of Eliot.

- b. “9. Accordingly, and having conferred with the Trustee and the beneficiaries of the Trust, Mr. O'Connell has agreed to have Mrachek-Law retained to represent the Estate in the Stansbury litigation so long as the Court appoints Ted Bernstein as Administrator Ad Litem to stand as the Estate's representative in defending and protecting the estate's interests in the Stansbury litigation.”
 - c. “As indicated above, the Trustee has conferred with not only Mr. O'Connell, but each of the beneficiaries of the Trust, which is the sole beneficiary of the estate, and all are in agreement.”
5. Filing # 36122958 E-Filed 01/04/2016 04:32:05 PM “SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS”
- a. “1. Plaintiff, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, seeks the appointment of a guardian ad litem to protect the interests of Eliot Bernstein's three children. By its ruling at the trial held on December 15th, the Court upheld the 2012 Will and Trust of Simon L. Bernstein and the 2008 Will and Trust of Shirley Bernstein. As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. Eliot lacks standing to continue his individual involvement in this case.”
 - i. The ruling did not determine any of the beneficiaries or Eliot’s standing and now with Rose’s and O’Connell admission of Eliot as Beneficiary in Simon Estate and Judge Scher Confirming on record Eliot is beneficiary and has standing Rose statement is false.
 - ii. No Construction hearing has ever been held and this is just plain BS.
 - b. “In light of the Final Judgment dated December 16, 2015, upholding Simon's 2012 documents, Eliot is not a beneficiary of the Shirley Trust or the Simon Trust. As such, he lacks standing to participate as an individual.

- i. Eliot has standing as both a beneficiary and interested party in the Shirley and Simon Trusts as he is named in both Trusts as a beneficiary. Despite an amended Simon Trust that claims he was disinherited he is still a beneficiary under the Original Trust with standing and since no Construction hearings have ever been held in any of the Estate and Trusts of Simon and Shirley he remains both a beneficiary and has standing.
 - ii. The Dec 15 2015 hearing says NOTHING about Eliot's standing.
 - iii. The Dec. 15 2015 hearing does not state who beneficiaries are either.
 - c. "(iii) strike and/or dismiss all of Eliot's filings in this case as described above for lack of standing;
6. RECEIVED, 1/11/2017 2:31 PM, Clerk, Fourth District Court of Appeal "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"
- a. "(Eliot has no standing to challenge the business judgment of the Trustee, because he is not a beneficiary of the Trust.)"
 - i. Eliot is a beneficiary of the Simon Trust in the Original Trust that was amended and has standing as both a beneficiary and interested party.
7. RECEIVED, 12/28/2016 4:52 PM, Clerk, Fourth District Court of Appeal "APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE, RESPONSE TO APPELLANT'S UNTIMELY MOTION FOR REHEARING, CERTIFICATION AND TO VACATE ORDER DISMISSING APPEAL AND TO ACCEPT LATE-FILED INITIAL BRIEF"
- a. "The Bernstein Trustee brought a trust construction action as permitted under section 736.0201(4)(e-g): ascertaining beneficiaries; determining questions arising in the distribution of trust assets, including questions of construction of the trust instruments; and determining who are beneficiaries and in what percentage."
 - i. Wholly untrue, no Trust Construction hearing was ever held and thus this is a BIG FAT LIE.
 - b. Ultimately, the trial court will need to appoint a successor trustee for each of Grandchildren Trusts for which Eliot refuses to serve"

- i. No Grandchildren Trusts exist in record or were produced at validity hearing.
 - ii. No Grandchildren were ever served Notice of Trusts or Notice of Administration.
 - iii. No Trusts exist for Eliot's children per Rose.
- 8. December 28, 2016 Ted Bernstein filing "AMENDED MOTION FOR SANCTIONS PURSUANT TO FLORIDA STATUTE §57.105 AGAINST WILLIAM STANSBURY AND PETER FEAMAN, ESQ. FOR FILING MOTION TO VACATE IN PART ORDER PERMITTING RETENTION OF MRACHEK FIRM [DE 497] AND MOTION TO DISQUALIFY [filed 11-28-16]; AND FOR STANSBURY'S FILING RESPONSE IN OPPOSITION TO MOTIONS TO APPOINT ADMINISTRATOR AS LITEM [DE 471] AND TO RATIFY AND CONFIRM APPOINTMENT OF TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN AMENDED AND RESTATED TRUST [DE 495]"
- a. "In addition, Stansbury opposes the Trustee's Motion to ratify his appointment or to have the Court appoint Trustee based upon the unanimous agreement of the beneficiaries."
 - b. "Footnote 3 - See Motion to Ratify and Confirm Appointment of Ted S. Bernstein as Successor Trustee of Trust Which Is Sole Beneficiary of the Estate, filed August 10, 2016 [DE 473]"
 - c. "The Trust beneficiaries all agree the Trustee should continue to serve..."
 - i. Where are signed consents from all beneficiaries
 - ii. Diana Lewis is acting as GAL under Trusts that do not exist and have not been produced and Grandchildren never noticed they were beneficiaries by Fiduciaries.
 - iii. Lewis got guardianship over an adult with no proper hearings.
 - iv. Lewis does not have guardianship over Josh at time and now Jake both over age of consent, 18.
 - d. "Because no funds can flow from the Estate to the Trust unless and until Stansbury's claim has been resolved, any claims by Stansbury that he has standing or may be prejudiced by Ted Bernstein serving as Trustee are nonsensical."

- i. Stansbury DOES HAVE STANDING, his standing was only limited in his ability to file a Removal of Trustee on Colin BS order, which Stansbury should move to vacate now.
- e. “Stansbury has never expressed concern over one of the largest assets in this Estate, a mortgage on Eliot's home.”
 - i. Stansbury is suing Entity that owns Eliot home in his lawsuit v. Ted and Simon.
- f. “Now that Eliot had been ruled to lack standing...”
 - i. Now that has been OVERRULED by Judge Scher who says Eliot as Beneficiary has standing in Simon and on record confirmed by Rose and O’Connell.
- g. “Against the backdrop of increased expense and delay, the beneficiaries agreed in a Mediation Settlement Agreement to ratify the appointment of Ted S. Bernstein ("Ted" or "Trustee"), as Trustee of Simon's Trust, and to have the Trustee and the Mrachek Firm (which has been directly involved in Stansbury's litigation for several years) assume representation of the Estate in the independent action.”
 - i. No full consent, no written consents. Eliot and his adult children have not consented to anything and Estate beneficiaries have not consented. Estate beneficiaries of Simon are 5 children, including Ted and Pam.
- h. “Ted also is the only person willing to stand up and defend the Estate against Stansbury's claim.”
 - i. Is O’Connell unable to stand up as PR, this makes him unfit. He should be standing up and alleging that Ted is the primary party responsible for damages to Stansbury and should pay damages.
- i. “GROUNDS FOR SANCTIONS - As grounds for sanctions, Trustee states: 1. On July 30, 2012, Stansbury filed suit against Simon Bernstein, his companies (LIC and AIM), his son (Ted S. Bernstein), a trust under his control (Shirley Trust), and others. Initially, all defendants including Simon retained the same counsel.”
 - i. Simon never retained Greenberg Traurig
- j. “At a mediation held on June 9, 2014, Stansbury settled with LIC, AIM, Ted and the Shirley Trust. Because no one was truly representing the Estate, and its only representative was Mr. Brown as the then-Curator, the Estate was unable to settle

its claims. The Trustee, as sole beneficiary of the Estate, did everything he could to attempt to achieve a settlement for the Estate, but to no avail.

- i. Trustee is not the Sole Beneficiary of the Estate.
- k. “However, the beneficiaries of the Estate (including the Guardian) and the Trustee all agreed to a global settlement of all disputes between and among the beneficiaries. The Trustee and beneficiaries included in their Mediation Settlement Agreement a provision confirming their agreement as to how to move the Stansbury claim to a prompt resolution:”
 - i. The GUARDIAN IS NOT A BENEFICIARY OF THE ESTATE OR GUARDIAN FOR ANY BENEFICIARY OF THE ESTATE
 - ii. Eliot is a Beneficiary of the Estate and thus he has not consented and if grandchildren are included his two adult children are believed not to consent. However his children have never been served notice they are beneficiaries of the trusts or estates of Simon and Shirley Bernstein.
- l. “On December 22, 2016, Mr. O'Connell signed a Statement of Its Position There Is No Conflict and His Waiver of Any Potential Conflict (Exhibit "1"), confirming there is no conflict in his view; supporting the retention and appointment of counsel and the administrator to handle the Stansbury litigation; and waiving any potential waivable conflict.”
 - i. Do not believe this is what he stated, FACT CHECK.
- m. “5. Merely because Ted S. Bernstein is the Trustee of the Simon Trust, the sole beneficiary of the Estate...”
 - i. The Trust is not Sole Beneficiary of the Estate, Ted is a beneficiary of the Estate as well as Eliot.
- n. “Each of those requirements is met. In particular, Mr. O'Connell as Personal Representative agreed with beneficiaries' direction to have the Mrachek Firm defend the Estate, and to waive any "waivable" conflict.”
- o. “None of those issues is present here. The Mrachek Firm is representing the Trustee, who is the sole beneficiary of this Estate, in related trust and estate matters. The interest of the Trustee is to minimize the expenses and the exposure to Stansbury's claim, to maximize the ultimate distribution from the Estate to the Trust. All of the direct and indirect beneficiaries of the Trust favor this representation.”
- p. “The lawyer serving as PR of the Estate believes there is no conflict and has waived any potential conflict, because the Mrachek Firm's involvement will reduce expenses and because the beneficiaries favor it. The only persons complaining, Bill Stansbury and his lawyer, are far from disinterested.”
- q. Eliot and adult children are believed to be complaining and have granted no consent.

- r. "To the contrary, all of the defendants' interests were fully aligned to defeat Stansbury's claim, and Mrachek Firm's work assisted in lowering the Estate's burden."
 - i. Not True BFR did not align against Stansbury
 - s. "Likewise, if the former client was Ted S. Bernstein or the company LIC!AIM, that substantially related representation is precisely why the Personal Representative, Trustee, and the beneficiaries (specifically including the Guardian) want Mrachek Firm to undertake this role."
- 9. From O'Connell statement Undated and Unfiled with Court Exhibited
 - a. In hearing Rose states he drafted this statement for O'Connell and he edited it.
 - b. "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."
 - i. Who advised, does he have personal knowledge, did he verify?
 - ii. All parties were not represented at settlement, BFR, etc.
 - iii. Settlement has been given to no beneficiaries
 - iv. O'Connell states he knows nothing of this lawsuit with Stansbury in this letter and under oath in Feb 16, 2017 hearing and March 02, 2017 hearing but then how could he have negotiated and drafted settlements and billed hours and hours of work for this lawsuit???????
 - c. "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..."
 - i. What beneficiaries advised? Did he do his own due diligence?
 - d. "(iii) I have no personal knowledge or involvement in this matter;"
 - i. If he has no personal knowledge, how did he attempt to settle as he claims????
- 10. "HEARING BEFORE THE HONORABLE JUDGE ROSEMARIE SCHER Volume 1 of 1 Pages 1 through 19 Tuesday, November 22, 2016"
 - a. "On Behalf of Eliot Bernstein's minor children:
 ADA & MEDIATION SERVICES, LLC 2765 TECUMSEH DRIVE
 2765 Tecumseh Drive
 West Palm Beach, Florida 33409
 dzlewis@aol.com

BY: DIANA LEWIS, ESQ.

- i. Diana Lewis does not represent ANY beneficiaries of the Estate of Simon and only represents 1 minor child at this time, 2 at time of predatory guardianship order
- b. “MS. LEWIS: And I'm Diana Lewis. I'm the guardian ad litem for the Eliot and Candace Bernstein children, Joshua, Jake, and Daniel.”
 - i. Only two at this time. Jake on 1/1/17 no longer
- c. Rose statement to Court
 - “9 Coates, Judge Phillips. We finally started
 - 10 making progress with Judge Phillips. He
 - 11 conducted a trial last December and determined
 - 12 who the beneficiaries are of the estate. He
 - 13 then entered two further orders, which I
 - 14 provided to you, that state that Eliot
 - 15 Bernstein, the gentleman on the phone, lacks
 - 16 standing and is no longer able to participate
 - 17 in these proceedings, is not allowed to file
 - 18 any papers.”
 - i. No Construction hearing was held determining beneficiaries
 - ii. In Feb 16, 2017 hearing and in March 02, 2017 hearing Scher confirms I am a beneficiary of the Estate of Simon with Standing. This contradicts what Rose states Phillips order state.
- d. Rose statement to Court
 - 20 to approve a settlement. It was entered into
 - 21 at mediation. There's a guardian that
 - 22 represents three of the children. And we're --
 - 23 it's uncontested, the settlement, with anyone
 - 24 that has standing to contest it.
 - i. Eliot has standing and contests it.
 - ii. Lewis at time has guardianship for minors only and her guardianship is under Grandchildren Trusts that DO NOT EXIST.

e. Rose statement to Court

4 set it for a hearing. But, again, there's --
5 nobody with standing has opposed the
6 settlement. It's signed off by all of the
7 parties and by the guardian who represents the
8 interests of three children.

f. Rose statement to Court

15 THE COURT: There's an order issued that
16 he lacks standing on February 1st.
17 MR. ROSE: Correct.

i. In what capacities, individually or as a beneficiary??

g. Scher statement

9 THE COURT: Okay. So we'll see you
10 November 29th at 9:30.
11 Mr. Bernstein, keep in mind I have an
12 order that says you have no standing. So
13 you've got two minutes.

i. Contradicts her statement here in the March 2, 2017 hearing and the
February 16, 2017 hearing and now states I have standing that contradicts
Order that was gained through Rose false statements to Phillips.

h. Scher statement

16 THE COURT: I'm only having a scheduling
17 conference on November 29th. You appeared
18 today. You can appear -- I am unsure at this
19 exact moment what your status is. So I'm going
20 forward with the November 29th hearing at 9:30.

i. Now she is not sure of my status

11. TRANSCRIPT OF PROCEEDINGS BEFORE HONORABLE JOHN L. PHILLIPS

DATE: September 1, 2016 TIME: 8:44 a.m. - 8:50 a.m.

"25 Mr. O'Connell and all the beneficiaries want it to

1. be as we've put it in the motion”

i. All beneficiaries have not consented.

12. TRIAL BEFORE THE HONORABLE JOHN L. PHILLIPS Tuesday, December 15,
2015 9:43 a.m. - 4:48 p.m.

a. Rose and Spallina statements

Page 29-30

“22. . . . Q. Okay. Now, under Simon's trust agreement,
23. moving down to the third paragraph, under that heading,
24. it says that both trusts provide for mandatory income
25. distributions. And then the next sentence starts, "Upon
1. Shirley's death, she has been given a special power to
2. appoint the remaining assets of both the marital trust
3. and the family trust to any of your lineal descendants
4. and their spouses, a power to redirect and reallocate."

i. Note that the LIMITED POWER OF APPOINTMENT IS ONLY FOR
THE MARITAL AND FAMILY TRUSTS THAT ACCORDING TO
THEM WERE NEVER CREATED AND WERE NOT PRODUCED
EVER TO ANY PARTY, therefore it is WORTHLESS

ii. This statement is in regard to Simon's Trust but they later state it is same
in Simon

b. Rose and Spallina statements

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11. . . . Q. Now, if Shirley died first, then did the
12. documents give Simon the same power of appointment over
13. the assets in her trust that was provided for in the
14. Simon document if he died?
15. . . . A. Same power of appointment was in both
16. documents. They were identical documents, with one
17. exception.

i. Here they confirm that Power of Appointment is only for Family Trust and
Marital Trust. Those trusts were never created and so POA is moot.

c. Rose and Spallina statements

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6 · · · · Q · And then Simon had a power of appointment,

· 7 · · correct?

· 8 · · · · A · · Um-hum.

· 9 · · · · Q · And if -- you have to say yes or no.

10 · · · · A · · Yes.

11 · · · · Q · And if he didn't exercise the power of

12 · appointment, was there a default set of beneficiaries

13 · that were designated in the documents you drafted in

14 · 2008?

15 · · · · A · · Yes.

16 · · · · Q · And what was the default set of beneficiaries?

17 · · · · A · · Simon had and Shirley had in their documents

18 · excluded Pam and Ted at the death of the survivor of the

19 · two of them.

20 · · · · Q · Okay · So if the power of appointment was not

21 · properly exercised, it would just go to three, and Eliot

22 · would end up with 33 and a third percent and two of the

23 · other sisters would get the balance?

24 · · · · A · · That's correct.

i. Oh, then Eliot is a beneficiary under Shirley's Trust

d. Rose and Spallina statements

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22 · · · · Q · Did any of the -- did any of the children play

23 · any role in bringing Simon or Shirley to your offices?

24 · · · · A · · Not that I'm aware, no.

i. Total BS, Ted brought them together. They were Ted's friends and business associates and Tescher's wife was billing for consulting to Simon and Ted's companies before this time.

e. Spallina statements

Page 46-47

22 · · · · A · · I think that we were still waiting -- I'm not

23· ·sure that -- we were still waiting on waivers and
24· ·releases from the children to close the estate, to
25· ·qualify beneficiaries under the estate if Si were to
47

·1· ·die· We had to get waivers and releases from them.

f. Rose and Spallina statements

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·3· · · · Q· ·And then you list -- just to speed up, then
·4· ·you have -- underneath that, it says Shirley's asset was
·5· ·empty, right? Because whatever was in had gone to
·6· ·Simon?

·7· · · · A· ·Yeah, her estate had nothing in it.

·8· · · · Q· ·She had a Bentley, I think, when she died.

·9· · · · · Do you know what happened to the Bentley?

10· · · · A· ·I wasn't aware that she had a Bentley.

11· · · · Q· ·Did you come to learn that she had a Bentley

12· ·and Simon gave it to his girlfriend, and she traded it

13· ·in at the dealership and got a Range Rover?

14· · · · A· ·Much, much, much later on --

i. Inventory never adjusted by TS or TED

g. Rose and Spallina statements

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·6· · · · Q· ·Okay· This email is dated May -- May 17,
·7· ·2012, from Eliot, correct?

·8· · · · A· ·Yes, it is.

·9· · · · Q· ·This would have been after the conference
10· ·call?

11· · · · A· ·This, I believe, was after the conference
12· ·call, yep.

13· · · · Q· ·And he says he's attached the waiver

14· ·accounting and portions of petition for discharge,

15· ·waiver of service for a petition for discharge, and

16· ·receipt of beneficiary and consent to discharge that he

17· ·had signed.

18· · · · · Did you receive those from Eliot?

19· · · · A· ·Yes, I did· We received -- that was the first

20· ·waivers that we received.

- i. If Eliot is not a beneficiary in Shirley's estate why is he signing this and not the grandchildren and why is he noticed in the notice of admin that he is a beneficiary.

h. Rose and Spallina statements

Page 64-65

23· · · · · "Your amended and restated trust provides that

24· ·on your death, your assets will be divided among and

25· ·held in separate trusts for your then living

65

·1· ·grandchildren," correct?· I was reading paragraph -- the

·2· ·middle paragraph.

·3· · · · A· ·Yes, I see that· Yes.

·4· · · · Q· ·I actually skipped the part above, which is

·5· ·probably more important, which says -- in the middle of

·6· ·the first paragraph, it says, "In addition, you have

·7· ·exercised the special power of appointment granted to

·8· ·you under Shirley's trust agreement in favor of your

·9· ·grandchildren who survive you."

10· · · · · Do you see that?

11· · · · A· ·Yes.

- i. Then living grandchildren in both Simon and Shirley's Trusts and the Amended Simon, only include Eliot, Jill and Lisa children as defined to hold separate trust thereunder and those would be Eliot Jill and Lisa Family Trusts. Ted, Pam and their lineal descendants are predeceased under the documents.

ii. The LIMITED POWER OF APPOINTMENT ONLY APPLIES TO THE FAMILY TRUST AND MARITAL TRUST that they claim were never created, so MOOT.

i. Rose and Spallina Statement

13 · · · · Q · Is it your belief that under the terms of
14 · Shirley's document from -- the ones she actually signed,
15 · that Simon had the power to appoint the funds to the ten
16 · grandchildren?

17 · · · · A · Yes · We -- we prepared the documents that
18 · way, and our planning transmittal letter to him
19 · reflected that.

i. Could not exercise except on two trusts that were never created

ii.

j. Eliot and Spallina statement

Page 95

21 · BY MR. BERNSTEIN:

22 · · · · Q · And did you state to them that you
23 · fraudulently altered a Shirley trust document and then
24 · sent it through the mail to Christine Yates?

25 · · · · A · Yes, I did.

96

1 · · · · Q · Have you been charged with that by the Palm
2 · Beach County Sheriff yet?

3 · · · · A · No, I have not.

k. Eliot and Spallina statement

Page 96

9 · · · · Q · Did you mail a fraudulently signed document to
10 · Christine Yates, the attorney for Eliot Bernstein's
11 · minor children?

12 · · · · · MR. ROSE: · Objection · Relevance.

13 · · · · · THE COURT: · Overruled.

14 · · · · · THE WITNESS: Yes.

15 · BY MR. BERNSTEIN:

16 · · · · Q · And when did you acknowledge that to the
17 · courts or anybody else? When's the first time you came
18 · about and acknowledged that you had committed a fraud?
19 · · · · A · I don't know that I did do that.

l. Eliot and Spallina statement

Page 97

23 · · · · Q · Did the fraudulently altered document change
24 · the beneficiaries that were listed in Shirley's trust?
25 · · · · A · They did not.

m. Eliot and Spallina statement

Page 98

1 · · · · Q · Who are the beneficiaries of Shirley's trust?
·2 · · · · A · It depends on -- under the trust instrument,
·3 · in the absence of Si exercising his power of
·4 · appointment, it would be yourself and your two sisters,
·5 · Lisa and Jill.
·6 · · · · Q · Oh · So the only beneficiaries in Shirley's
·7 · trust are me, Lisa and Jill.
·8 · · · · · Is that directly or through a family trust?
·9 · · · · A · Your father had established -- your parents
10 · had established family trusts for the three of you to
11 · receive assets from the trust.

n. Eliot and Spallina statement

Page 106

7 · · · · Q · Did your office -- did you submit documents to
·8 · close the estate of Shirley with Simon as the personal
·9 · representative at a time Simon was dead?
10 · · · · A · We did.
11 · · · · Q · You did? Excuse me? I didn't hear an answer.

12· · · · A· ·I said yes.

13· · · · Q· ·So Shirley's estate was closed by a dead

14· ·personal representative.

15· · · · ·Can you give me the time that the estate was

16· ·closed by Simon while he was dead?

17· · · · ·MR. ROSE:· Objection· Argumentative.

18· · · · ·THE COURT:· Overruled.

19· · · · ·You can answer.

20· · · · ·THE WITNESS:· I believe it was October,

21· · · · November 2012.

o. Eliot Spallina Rose statements

15· · · · Q· ·Okay· And you said you made copies of all the

16· ·documents that you turned over to the curator?· Did you

17· ·turn over any original documents as ordered by the

18· ·court?

19· · · · ·MR. ROSE:· Objection· Same objection.

20· · · · There's no court order requiring an original

21· · · · document be turned over.

p. Eliot and Spallina

Page 131

12· · · · Q· ·Was there anybody else who was left out of the

13· ·wills and trusts?

14· · · · A· ·That was causing him stress?

15· · · · Q· ·No· Just anybody at this point that was left

16· ·out, other than Pam.

17· · · · A· ·Yes· Ted.

q. Eliot and Spallina

Page 135

2· · · · Q· ·Okay· Can you read that?

·3· · · · A· ·"Notwithstanding the foregoing, as I have

·4· ·adequately provided for them during my lifetime, for

·5· purposes of the dispositions made under this trust to my
·6· children, Ted S. Bernstein and Pamela B. Simon and their
·7· respective lineal descendants shall be deemed to have
·8· predeceased the survivor of my spouse and me, provided,
·9· however, if my children Eliot Bernstein, Jill Iantoni
10· and" --

11· . . . Q. Okay, that's -- you can stop there.

12· Would you consider making distributions a
13· disposition under the trust?

r. Eliot and Spallina

Page 136

21· . . . Q. Did you produce a fraudulent copy of the
22· Shirley trust agreement?

23· . . . A. No, I did not.

24· . . . Q. So when you sent to Christine Yates this trust
25· agreement with the attached amendment that you've
137

·1· already admitted you fraudulently altered, was that
·2· producing a not valid copy of the trust that was
·3· distributed to a party?

·4· . . . A. We've already talked about the amendment was
·5· not a valid amendment.

·6· . . . Q. No, I'm asking, did you create a not valid
·7· trust of my mother's and distribute it to Christine
·8· Yates, my children's attorney?

Page 138

·9· BY MR. BERNSTEIN:

10· . . . Q. Okay. You've already stated that you created
11· a fraudulent amendment.

12· Did you attach it to a Shirley trust document?

13· . . . A· ·No· We included the amendment with the
14· documents that we transmitted to her.
15· . . . Q· ·So it was included as part of the Shirley
16· trust document as an amendment, correct?
17· . . . A· ·It was included as an amendment.
18· . . . Q· ·To the Shirley trust document.
19· Thereby, you created a fraudulent copy, a not
20· valid copy of the Shirley trust, correct?
21· MR. ROSE:· Objection· Argumentative.
22· . . . Cumulative.
23· THE COURT:· Overruled.
24· You can answer· Did that create a fraudulent
25· version of the trust?

Page 139

1· THE WITNESS:· It could have, yes, Your Honor.

s. Eliot and Spallina

Page 144

23· . . . Q· ·Can the beneficiary of Shirley's trust be Ted,
24· Pam or their lineal descendants?
25· . . . A· ·If the assets of her trust were to pass under

Page 145

1· the trust, no --

·2· . . . Q· ·Okay.

·3· . . . A· ·--- under the trust.

·4· . . . Q· ·So in the trust language of the Shirley trust
·5· document, Ted's lineal descendants and Pam's lineal
·6· descendants can get no dispositions, distributions,
·7· whatever you want to call it?

·8· . . . A· ·You have to ask the question in a different
·9· way, because I answered the question· I said, if it
10· passes under the trust, that they would not inherent.

11· ·If.

t. Eliot and Spallina statement

Page 161

10· · · · · THE COURT:· I'm reading paragraph 2 even as we

11· · · · speak, so I don't need the witness to read it for

12· · · · me.· But if you want to ask him a question, you can

13· · · · go ahead with that.

14· ·BY MR. BERNSTEIN:

15· · · · Q.· ·Okay.· That letter states that Si's power of

16· ·appointment for Simon could not be used in favor of Pam,

17· ·Ted and their respective children; is that correct?

18· · · · A.· ·Yes.· Don appears to have written that.

19· · · · Q.· ·Did you get a copy of this letter?

20· · · · A.· ·I don't recall getting a copy of it, but

21· ·doesn't mean that I didn't.

22· · · · Q.· ·But you are partners in that firm?

23· · · · A.· ·Yes, we were partners in that firm.

u. Eliot and Spallina statement

Page 161

24· · · · Q.· ·Now, that -- this document --

25· · · · · MR. ROSE:· Your Honor, can I just -- I don't

Page 162

·1· ·want to go out of order, but this is only relevant

·2· ·if the documents are valid.· And if he's -- the

·3· ·whole point is the documents are valid.· And he

·4· ·wants to argue the second part, of what they mean,

·5· ·then we should not have wasted a whole day arguing

·6· ·over the validity of these five documents.

·7· · · · THE COURT:· Well, waste of time is what I do

·8· ·for a living sometimes.· Saying we shouldn't be

·9· ·here doesn't help me decide anything.

10· . . . I thought I was supposed to decide the
11· ·validity of the five documents that have been
12· ·pointed out; some of them might be valid and some
13· ·of them might be invalid.· And I'm struggling to
14· ·decide what's relevant or not relevant based upon
15· ·the possibility that one of them might be invalid
16· ·or one of them might not.· And so I'm letting in a
17· ·little bit more stuff than I normally think I
18· ·would.

19· . . . MR. ROSE:· I'm concerned we're arguing the
20· ·second -- the second part of this trial is going to
21· ·be to determine what the documents mean and what
22· ·Simon's power of attorney could or couldn't do.
23· ·And this document goes to trial two and not trial
24· ·one, although I didn't object to its admissibility.

i. Rose commits suicide here as he then sells Courts in state and federal that
Construction was done at this hearing and the power of appt was litigated
and we see clearly BIG FAT LIAR

v. Eliot and Spallina statement

Page 163

20· ·BY MR. BERNSTEIN:

21· . . . Q.· It says here that there was a blank spot that
22· ·you -- a Paragraph No. 2 which modified the definitional
23· ·language by deleting words.

24· According to this document, the power of
25· ·appointment by Simon could not alter the Shirley trust

Page 164

·1· ·agreement, correct?

·2· . . . A.· Don seems to be suggesting that in the second
·3· ·paragraph.· I don't necessarily believe that that's the
·4· ·case.

·5· . . . Q. · Did you review this document with Don?
·6· MR. ROSE: · Objection. · Cumulative.
·7· THE COURT: · The question is, Did you go over
·8· . . . this document with Don?
·9· MR. BERNSTEIN: · Correct.
10· THE COURT: · Overruled.
11· You can answer.
12· THE WITNESS: · No.

w. Spallina and Rose

Page 188

23· ·BY MR. ROSE:

24· . . . Q. · Assuming the documents are valid, they'll have
25· ·to be a later trial to determine the effect of Simon's

Page 189

·1· ·exercise of his power of appointment?

·2· . . . A. · Yes.

·3· . . . Q. · It doesn't have any direct bearing on whether
·4· ·these five documents are valid?

·5· . . . A. · No.

x. Eliot and Ted statement

Page 211

18· . . . Q. · If the judge invalidates some of the documents
19· ·here today, will you personally lose money, interest in
20· ·the estates and trusts as the trustee, your family, you?

21· . . . A. · I will not.

22· . . . Q. · Your family?

23· . . . A. · My -- my children will.

24· . . . Q. · So that's your family?

25· . . . A. · Yes.

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·1· . . . Q. · Okay. · So do you find that as a fiduciary to

·2· ·be a conflict?

·3· · MR. ROSE:· Objection.

·4· · THE WITNESS:· No.

y. Rose and Ted

Page 215

·3· · Do you care one way or the other how these

·4· · documents are decided by the Court?

·5· · . . . A.· ·Absolutely not.

·6· · . . . Q.· ·Did you care when your father or mother made a

·7· · document that did not specifically leave any money to

·8· · you?

·9· · . . . A.· ·I did not.

10· · . . . Q.· ·Now, did you care for anybody other than

11· · yourself?

12· · . . . A.· ·I cared for the -- for the sake of my

13· · children.

14· · . . . Q.· ·And why did you care for the sake of your

15· · children?

16· · . . . A.· ·My parents had a very good relationship with

17· · my children, and I did not want my children to

18· · misinterpret what the intentions of their grandparents

19· · were and would have been.· And for that reason, I felt

20· · that it would have been difficult for my children.

z. Rose Closing

Page 241

17· · . . . And we would ask that you uphold the five

18· · documents and determine, as we have pled, that the

19· · five testamentary documents that are in evidence, I

20· · believe, as 1, 2, 3, 4, and 5 be upheld and

21· · determined to be the valid and final testamentary

22· · documents of Simon and Shirley Bernstein.· To the

23· ·extent there's any question the document that has
24· ·been admitted to be not genuine be determined to be
25· ·an inoperative and ungenuine document, we would ask

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1· ·that you enter judgment for us on Count II and
·2· ·reserve jurisdiction to deal with the rest of the
·3· ·issues as swiftly as we can.

13. Case: 1:13-cv-03643 Document #: 265 Filed: 10/06/16 Page 1 of 8 PageID #:13213

“COUNTER-DEFENDANTS, CROSS-DEFENDANTS, AND THIRD-PARTY
DEFENDANTS’ REPLY TO ELIOT BERNSTEIN’S RESPONSE TO MOTION FOR
SUMMARY JUDGMENT

- a. “II. THE FLORIDA PROBATE COURT HAS RULED, AFTER TRIAL AND HEARINGS, THAT ELIOT HAS NO INTEREST OR STANDING AS A BENEFICIARY OF THE ESTATE EITHER ON HIS OWN BEHALF OR AS PARENT/GUARDIAN FOR HIS MINOR CHILDREN. THESE PROBATE ORDERS RESOLVE ISSUES THAT ARE GERMANE TO THE ISSUE OF ELIOT’S STANDING IN THE INSTANT LITIGATION.”
 - i. Now that Scher confirmed I am bene and Rose admitted and I have standing this was false pleading to fed court that must be reversed and corrected and in his Order
- b. “(iv) Eliot Bernstein is not a beneficiary of the Estate,”
- c. “Also, this court can and should apply the doctrine of collateral estoppel to preclude any re-litigation of one very pertinent issue that was previously determined in the Probate Actions -- that Eliot has no interest in the Estate.”
- d. “Since the Florida Probate Court already determined that Eliot is not a beneficiary in the Estate, and no longer has any authority to represents the interests of his own children, the Probate Orders are preclusive as to any relief Eliot seeks here based on an interest in the Estate.”

14.

- a.
- b.

- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.
- k.
- l.
- m.
- n.
- o.
- p. d