

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ELIOT IVAN BERNSTEIN

Appellant,

v.

ESTATE OF SIMON L. BERNSTEIN, et al.

Appellee.

CASE NO. 4D17-1607

L.T. CASE NOS.

2012CP004391XXXXNB

APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS

Comes now Appellant Eliot I. Bernstein who respectfully pleads and shows this Court as follows:

1. I am the Appellant pro se and file this response to this Court's Order of June 28, 2017 and in response to Appellee's motion to dismiss.
2. As the Court's Order required the response to be filed within 5 days which was July 3rd, 2017 and the Courts were closed in observance of the federal holiday of Independence Day (July 03 and July 04) and today is the first business day after, this response is timely filed.
3. Appellee's motion is misleading and misplaced and must be denied.
4. While Appellee claims that claimant-creditor Stansbury's motion to Disqualify the Mrachek law firm "in the trial Court", counsel Alan Rose for

Ted Bernstein of the Mrachek law firm directly misleads this Court by not clarifying that the Withdrawal of the motion *did NOT occur* in the Probate Court where the Order on Appeal was issued and instead was allegedly withdrawn in a separate, independent action which is not part of this Appeal or Order and was only done after the Order on Appeal was issued.

5. Alan Rose of the Mrachek law firm further misleads this Court by claiming that Appellant did not oppose the motion.
6. The Order on Appeal itself shows that Appellant did in fact “join” in opposing the motion that is the subject of the Order on Appeal.
7. Appellant appeared at Hearings, attempted to get due process and question witnesses, and actively filed documents and even cross-motions.
8. One of the cross-motions sought Injunctive relief and to enjoin various parties including Ted Bernstein and the Mrachek law firm regarding documents, evidence and records. See, March 16, 2017 filing (Exhibit 1.)
9. There are many other meritorious issues to be raised on Appeal including specific fact findings that were clearly erroneous and against the weight of the evidence and determinations of law that are clearly in error and an abuse of discretion.

10. The lower tribunal further failed to issue affirmative relief for the fraud upon the Court which the lower Tribunal witnesses and which the Appellant directly moved for.
11. There is further fraud in the issuance of the Order on Appeal itself such as recitations to actions by the Guardian Diana Lewis falsely acting for individuals who were not Minors at the time and falsely claiming to have “consent” of beneficiaries when such consents were not provided or legally gained.
12. Thus, the motion to Dismiss should be denied in its entirety and if the Court wishes Appellant to brief some specific issue, a separate Order should be issued.

Wherefore, Appellant respectfully prays that the Motion to Dismiss be denied in its entirety and that the Appeal go forward on the merits and for such other and further relief as may be just and proper.

Dated: July 05, 2017

By: /S/ Eliot Ivan Bernstein

Eliot Ivan Bernstein, Pro Se

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been served by e-mail on all parties listed on the attached service list, this 5th day of July, 2017.

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(Fla. Bar No. 351350)

EXHIBIT 1 - March 16, 2017

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

IN RE:

Case No. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

Honorable Judge Rosemarie Scher

Deceased.

_____ /

**ELIOT I. BERNSTEIN AS BENEFICIARY AND INTERESTED PERSON WITH
STANDING SUPPLEMENTAL EXHIBIT ON DISCOVERY AND CONFLICTS
RELEVANT TO INITIAL HEARINGS: AUGUST 2014 EMAIL NOTICE TO PR
O'CONNELL REGARDING "MISSING MAIL" - COMMISSION CHECKS FROM
SPALLINA TESCHER PRODUCTION FOR SIMON BERNSTEIN and
SUPPLEMENTAL EXHIBIT ALAN ROSE EMAIL DATED MAY 20, 2015 SHOWING
ALAN ROSE AND TED BERNSTEIN "INTERTWINED" WITH PR O'CONNELL IN
THE LOCATION, WHEREABOUTS, AND ACCOUNTING OF TPP, DOCUMENTS,
DISCOVERY ETC**

COMES NOW Eliot I. Bernstein, pro se, as a beneficiary and interested person in the Estate of
Simon Bernstein who respectfully submits these SUPPLEMENTAL EXHIBITS ON
OUTSTANDING RELEVANT DISCOVERY AND CONFLICTS as follows:

1. I am Eliot Bernstein pro se and am a named Beneficiary with Standing in the Will of Simon
Bernstein.
2. This Court already has the Exhibit Letter from June 20, 2012 from William Stansbury's counsel
Peter Feaman sent certified mail to TED BERNSTEIN ONLY detailing various claims
including but not limited to: Lost Mail - Opening of Mail and Conversion of Commission
Checks by Ted Bernstein.
3. The first supplemental exhibit below is an email sent to PR O'Connell by myself in August of
2014 notifying PR O'Connell of the "missing mail" of Simon Bernstein's and claim for missing

Commission checks and inquiring if PR O'Connell ever obtained these from former fiduciaries Tescher and Spallina.

4. This impeaches PR O'Connell's recent testimony in these hearings that he wasn't aware of any facts that could make Ted Bernstein liable to the Estate.
5. PR O'Connell has admitted that he does not know what he has reviewed or obtained or received or produced for Discovery and does not know about what Commission checks from LIC or Arbitrage that Simon Bernstein should have received.
6. Regardless of any "settlement" between Ted and Stansbury, the Estate should have separate claims against Ted Bernstein and potentially others to fully account for Simon Bernstein's Commission checks and Commissions for years 2008 up to the time of passing in Sept. of 2012.
7. These fiduciaries have not provided this Court with any information in this regard.
8. **This alone justifies DENYING BOTH ALAN ROSE AND TED BERNSTEIN from Any representation in the ESTATE.**
9. These facts alone justify an Order forcing Alan Rose, Ted Bernstein and PR O'Connell to be ENJOINED from Any Destruction, losing, concealment of any Discovery in these cases and each individual should be Ordered to begin Cataloging INDIVIDUALLY the DISCOVERY AND DOCUMENTS-RECORDS in possession of each party.
10. There is a real and present Serious Conflict between Ted Bernstein and PR O'Connell on this issue alone, both Discovery and the underlying merits of Simon Bernstein's claims to monies from LIC including Commission checks.
11. Ted Bernstein should be denied ANY representation of the Estate of Simon Bernstein and further Hearings to Remove these Fiduciaries should occur after full and complete Discovery and Depositions.

From: Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]

Sent: Wednesday, August 6, 2014 1:46 PM

To: Brian M. O'Connell PA ~ Partner @ Ciklin Lubitz Martens & O'Connell
(boconnell@ciklinlubitz.com)

Subject: Simon Bernstein mail

Brian, from the Spallina and Tescher production, it is noted that all of Simon's mail is missing from their files and I was wondering if you could find out where the mail is going and have it marshalled to your address as PR? When you find out where it has been going can you have whom ever has it return all mail to you since Simon passed. We believe there was commissions and other checks that may have been sent to him and other relevant mail. There is even evidence that Simon got a ticket Post Mortem and the mail sent to his house from the DMV is missing and it led to his license being suspended from failure to respond to the DMV, which Ben Brown then had to correct. Please also check where any business mail addressed to Simon went and has been going. Thanks, Eliot

Eliot I. Bernstein
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12. Further, the additional Supplemental Exhibit below is an email from Ted Bernstein's attorney Alan Rose from May 20, 2015 who allegedly "found" new and "original" Documents in the home of Simon Bernstein at 7020 Lions Head Lane Boca Raton, Fl.
13. Upon information and belief, this sudden "magical" finding by Rose occurred just as these cases were about to be Transferred to the Northern Branch originally to Judge Coates and meetings with the Palm Beach County Sheriff regarding fraudulent documents also claimed to have been magically found.
14. Most importantly, this magical "finding" of new Documents, alleged "Originals" (Duplicate Originals) in the Home occurred AFTER PR O'Connell's firm claimed to have Fully Inventoried the Home and removed all items, none of the newly found documents have been submitted to the Court by Mr. Rose or Mr. O'Connell who are both in possession of them.
15. This further creates a Conflict of Interest preventing both Ted Bernstein and Alan Rose from representing the Estate of Simon Bernstein in any capacity and further justifies the immediate need for an Injunction against Rose, Ted Bernstein and PR O'Connell to separately and individually account for ALL Discovery from the inception of the case to the present.

From: Alan Rose [<mailto:ARose@mrachek-law.com>]

Sent: Wednesday, May 20, 2015 2:14 PM

To: Lessne, Steven; Eliot Ivan Bernstein; Eliot Ivan Bernstein

Cc: Ted Bernstein; O'Connell, Brian M.; Foglietta, Joy A

Subject: Original signed "Oppenheimer" Trusts

Mr. Lessne and Mr. Eliot Bernstein:

I am writing to advise that we located some files in drawers in Simon's private office in his home at Lions Head, as we were trying to assess the complexity of things that must happen between now and the closing of Lions Head. My primary reason was to visually inspect the three chandeliers that have been the subject of PR emails in the past few days.

In any event, and although these files likely were examined and discounted as unimportant by the PRs after Simon's death and likely meant nothing if and when they were catalogued or viewed during the O'Connell as PR re-appraisal/re-inspection, I noticed a folder marked as the Jake Bernstein trust. Looking more closely, there were three green folders labeled with Eliot's children's names and inside are what appear to be the original signed Irrevocable Trust Agreements for the Trusts which Oppenheimer formerly served. **These may be relevant or important to the ongoing Oppenheimer case, so I bring them to your attention.** There also are what appears to be some tax returns and Stanford Account Statements. Simply because I have attended some of the Oppenheimer hearings, I understand that Eliot claims at least one of the Trusts does not exist. As an officer of the court, and because these may be relevant, I have taken temporary custody of the documents. I will hold them pending joint instructions or a court order, but would prefer to deliver them to Steve Lessne as Oppenheimer's counsel. These have no economic value and have no bearing on the estate, so I doubt Brian O'Connell would want them, but I did not want to see them lost or discarded in the impending move. To facilitate your review, I have scanned the first and last page of each trust, and scanned the first page of the ancillary documents, and attach that in .pdf format.

I am sure that people have looked through these files before, and there did not appear to be anything else of significance. (I did notice a few folders with other grandchildren's names, not Eliot's kids, but left those papers in place because I understand that everyone except Eliot has fully cooperated with Oppenheimer in resolving these matters.)

I also have had occasion to re-look through a small box of trust documents which I have been holding, which came from Simon's former work office. Inside file folders in a desk drawer, Simon retained duplicate originals of the trust agreements relevant to my cases. When I was looking to reexamine these documents – duplicate originals of the 2008 Trusts and the 2012 Trust (the true originals remain with Tescher & Spallina who drafted them) – I noticed a copy of the three separate irrevocable trust documents. Again, these would not have caught my eye originally because I would have never guessed that Eliot would claim the trusts were not valid. I only recently had occasion to notice these in looking for the duplicate trust originals for Simon and Shirley. The three Irrevocable Trusts appear to be signed and witnessed on page 17, but the individual pages are not initialed. Again, these were only copies, but now having looked at the originals included in the attached scan, I note (although not a handwriting expert) that the attached copies appear to be absolutely identical to the originals just found in Simon's personal office.

These copies include IRS forms under which Traci Kratish PA, as Trustee appears to have applied for and obtained a Taxpayer ID number for each trust, and obviously she provided these to Simon. Each of the Trust documents is signed by Simon Bernstein, as Settlor, and by Traci Kratish PA as the initial Trustee, and the signatures are witnessed by two people. Simon's is witnessed by Jocelyn Johnson and someone else. I am advised that Jocelyn was an employee of Simon's, as presumably was the second witness and also the initial Trustee, Traci Kratish, who was in house counsel for the companies Simon owned part of.

Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they

did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

Eventually, Traci Kratish left the employ as the in-house counsel for the companies. Sometime before or at the time of her leaving, she resigned and appointed someone else, and eventually these trusts accounts along with similar trusts for Simon's other seven grandchildren and much of Simon's personal wealth, were moved to Stanford. After Stanford's collapse amid word that it was a Ponzi scheme -- Simon lost upwards of \$2 million of his own funds in the Ponzi scheme -- Simon directed the transfer of the his and these trust accounts to Oppenheimer. Simon selected Oppenheimer; paid Tescher's firm to do the necessary documents to appoint Oppenheimer as successor trustee; took the documents from Tescher and had them signed by all children, including Eliot and Candice; and returned the documents to Tescher for filing. I presume that Simon paid all of these legal fees, because that is the right thing to do from an estate planning strategy and as a favor to his grandkids. I now have seen copies of the filed Petitions, and again without being a handwriting expert, it certainly looks like Eliot's and Candice's signature on them, regardless of whether they had ever met Tescher or Spallina before their parents' deaths.

Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

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WHEREFORE, it is respectfully prayed for an Order denying Ted Bernstein and Alan Rose from representing the Estate of Simon Bernstein in any capacity and enjoining Alan Rose, Ted Bernstein and PR O'Connell from destroying, losing or concealing any Discovery and ordering each individually to catalog and prepare a record of ALL DISCOVERY currently in their individual possession and such other and further relief as may be just and proper including but not limited further hearings to remove these fiduciaries after full Discovery and Depositions are completed and further relief as just and proper.

Dated: March 16, 2017

By: /S/ Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record and the proper parties on the attached Service List via the Court's e-portal system or Email Service on this 16th day of March, 2017.

By: /S/ Eliot Ivan Bernstein

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