

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008, as  
amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon  
L. Bernstein Trust Dtd 9/13/12, and on behalf of his  
minor children D.B., Ja. B. and Jo. B.; JILL  
IANTONI, Individually, as Trustee f/b/o J.I. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her Minor child J.I.; MAX FRIEDSTEIN; LISA  
FRIEDSTEIN, Individually, as Trustee f/b/o Max  
Friedstein and C.F., under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor child,  
C.F.,

Defendants.

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**MOTION TO MODIFY ORDER DATED MAY 22, 2017; TO DIRECT PAYMENT FOR  
BENEFIT OF ELIOT'S CHILDREN TO COURT REGISTRY; AND TO DETERMINE  
COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves to modify this Court's Order dated May 22, 2017, with regard to the selection and appointment of a Replacement Trustee for the three Eliot Children Trusts – the testamentary trusts created by the Simon L. Bernstein Amended and Restated Trust Agreement for the benefit of Eliot Bernstein's children. In addition, the Trustee seeks an order determining the final compensation and discharge for Guardian ad Litem (the "GAL"), and states:

1. By Order dated May 22, 2017, this Court entered an Order approving a settlement of this action. The settlement resolved this trust construction action and all issues among the beneficiaries, namely the representatives of the ten trusts created upon the death of Simon Bernstein under the terms of his Amended and Restated Trust Agreement dated July 25, 2012. The trustees of those trusts are four of the children of Simon Bernstein (with the sole exception of Eliot Bernstein), with Diana Lewis serving as GAL to look out for the best interests of Eliot's children.

2. As the Court will recall, by Order of Judge Phillips, it was determined that Eliot Bernstein's actions were adverse and destructive to his children's interest, which necessitated the appointment of a GAL. Essentially, the GAL is a surrogate for Eliot Bernstein as Trustee of the Eliot Children Trusts.

3. In paragraph 6 of the May 22, 2017 order, the Court indicated it would appoint a successor trustee upon the unanimous agreement of all persons concerned, or would appoint an independent person or entity to serve as trustee.

4. Despite multiple requests for input or discussion with Eliot Bernstein concerning this issue, he has refused to even discuss the matter. Trustee's counsel and the GAL have attempted to consult with Eliot and the Trustee hand-delivered through a process server a letter to Eliot's older children seeking input, communication, and suggestions as to Trustee. To date, there has been no response.

5. The undersigned also have conferred with a number of potential trustees and lawyers, including consultation with the Personal Representative and the GAL. It is now the collective belief of the parties involved in this matter that no one would serve as trustee of these trusts.

6. Oppenheimer, a large trust company which was serving as trustee for three other trusts created by Simon Bernstein for Eliot's children, became embroiled in years of litigation in this Court, connected indirectly to these cases, simply trying to resign and terminate the trust. In fact, the hearing to appoint Diana Lewis as Guardian Ad Litem in this matter was consolidated with the same hearing in the Oppenheimer case, and Diana Lewis was also appointed as Guardian Ad Litem for that matter.

7. The bottom line is that Oppenheimer could not find someone to replace it, and spent hundreds of thousands of dollars in years trying to extricate themselves from a relationship involving Eliot Bernstein. Neither Eliot nor Candace Bernstein would be capable of serving as trustee of these trusts, given Judge Phillips' Order, and the fact that there has been absolutely no improvement in Eliot's litigation conduct.<sup>1</sup>

8. The undersigned submits to the Court that the only viable and appropriate solution is to deposit any funds for the benefit of Eliot's children into the Registry of the Court, under the conditions set forth below or such other conditions as this Court deems appropriate.

9. The undersigned, in consultation with the personal representative and the GAL, did not make this request lightly. This is made after considerable thought and effort was putting into finding a workable, and cost efficient solution. In addition, in light of the settlement among the beneficiaries, which resolves all issues between them, it is in the best interest of the children to find a self-executing solution to holding or managing these funds so that the GAL can be discharged and avoid further expense.

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<sup>1</sup> Since the May 22 order, Eliot has been sanctioned by the Fourth District Court of Appeal and can no longer file *pro se* papers in that court, and he is subject to an order to show cause regarding contempt for his violation of prior orders regarding the guardian ad litem.

10. Under the terms of the testamentary trusts, upon obtaining the age of 25, each child was allowed to serve as co-trustee with his or her parent, or a suitable co-trustee. Upon obtaining the age of 25 and 30, partial distributions of principal were allowed, with the entire corpus being available upon each child reaching the age of 35.

11. Having considered the matter and discussed it with the GAL, the trustee suggests the following procedure:

a. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the settlement agreement, would instead be paid into the registry of the Court, separately, for the benefit of each of Eliot's three children;

b. any Court-awarded fees to the GAL will be paid before the distribution of any funds into the Registry, the Court will enter an order directing the payment of those fees awarded by the Court directly to the GAL;

c. if at anytime one of the three children requests a distribution consistent with the terms of the trust, he could seek such distribution by filing a motion with the Court, and the Court would release such funds as are deemed appropriate, simply and efficiently;<sup>2</sup> and

d. upon each child reaching the age of 30, each such child would be entitled to the immediate release of all remaining funds held by the Clerk of the Court.

11. While there may be some fees charged by the Clerk of the Court, any such fees will be minimal in comparison to the cost of bringing in an attorney or corporate trustee to serve as

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<sup>2</sup> For example, if one of Eliot's children needs funds for college tuition, it would be very simple to file a motion seeking court approval to direct the clerk to issue a check to some university, college or technical school.

trustee over these relatively modest trusts. Each trust will be funded with around \$100,000,<sup>3</sup> with the potential for more in the event there are funds left in Simon's estate after administrative expenses and payment of claims (which depends on the outcome of the Stansbury claim and the final administration of the Simon Bernstein estate). Given the time and expense involved in litigation with Eliot Bernstein, which would be virtually inevitable for any trustee willing to take this job, it makes no economic sense to appoint a successor trustee. The fees and expenses of utilizing the Court registry would seem trivial in comparison to that.

12. As far as the timing, now that this Court has approved the settlement in the Illinois litigation and given the fact that Eliot Bernstein rejected his share – which means Eliot's share of the settlement will be paid to the Eliot Children's Trust under the terms of the now-approved Settlement Agreement, it is imperative that this issue be resolved soon so there is a place to make that payment.

13. Accordingly, and with the advice and consent of the GAL, the Trustee requests the Court modify the May 22 order to provide that any and all payments to be made to the Eliot Children's Trust instead be paid to the Court Registry, which would eliminate the need and usefulness of the Eliot's Children Trust, which have never had a trustee and have yet to be funded.

14. In addition, upon entry of an order resolving the need for a new trustee, and the approval of all pending settlement agreements involving the GAL, the GAL should be discharged

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<sup>3</sup> The early termination of the trusts is not inconsistent with Simon's stated wishes. At the age of 30, each child is authorized to receive ½ of the trust corpus. If that happens, as it likely would, each trust would likely have less than \$50,000 (given the expected net distributions into each trust after the payment of GAL compensation). Article II.D of Simon's Trust permits the termination of any small trusts of \$50,000 or less to avoid administrative expenses. Thus, termination of the court-supervision at age 30, as suggested by the GAL, is logical and appropriate.

with the thanks of this Court, and her reasonable hourly rate and compensation should be determined.

15. Pursuant to previous orders, the fee for the GAL would be split equally between the three Eliot Children's Trust, and thereafter the GAL should be discharged.

WHEREFORE, for the reasons set forth above, the Trustee respectfully requests the Court modify the May 22, 2017 order and grant the relief set forth above.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 27<sup>th</sup> day of October, 2017.

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By: /s/ Alan B. Rose  
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## SERVICE LIST

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