

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.: 502014CP003698XXXXNBIH

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.

**PLAINTIFF'S MOTION TO STRIKE NOTICE OF APPEAL
AND MOTION FOR SANCTIONS**

Plaintiff, Ted S. Bernstein ("Trustee"), as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Trust"), files his Motion to Strike Eliot Ivan Bernstein's ("Eliot") Notices of Appeal and for Sanctions, for certain violations of Court orders and states:

1. The Court is familiar with the history of this case and issues with Eliot Ivan Bernstein.

2. On August 23, 2017, after entertaining many of Eliot's previous *pro se*, lengthy and frivolous appeals, the Fourth District Court of Appeals Sanctioned Eliot (the "Sanction Order"). A copy of the Sanction Order is attached as Exhibit "A."

3. The Sanction Order stated that "the Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented."

4. On January 6, 2018, Eliot filed a Notice of Appeal, seeking to appeal this Court's *Order on Plaintiff, Ted S. Bernstein's 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* (the "Order"). A copy of an excerpt from the Notice of Appeal¹ is attached as Exhibit "B."

5. The Notice of Appeal directly violated the Sanction Order. No member of the Florida Bar reviewed, signed or certified that a good faith basis existed for the claim presented. Therefore, the Notice of Appeal should be stricken.

6. Moreover, Eliot should be sanctioned for his conduct. The Florida Supreme Court has addressed instances when sanctions are proper in *Mercer v. Raine*, 443 So. 2d 944, 946 (Fla. 1983), stating:

A deliberate and contumacious disregard of the court's authority will justify application of the severest of sanctions, *Swindle v. Reid*, 242 So. 2d 751 (Fla. 4th DCA 1970), as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which

¹ The full Notice of Appeal can be found at ECF 296

evinces deliberate callousness, *Herold v. Computer Components International, Inc.*, 252 So. 2d 576 (Fla. 4th DCA 1971).

7. Eliot filing the Notice of Appeal warrants sanctions. In addition to filing in bad faith, the Notice of Appeal willfully and deliberately violated the Sanction Order.

WHEREFORE, Trustee requests that this Court strike Eliot's Notice of Appeal, sanction Eliot for filing the Notice of Appeal, and any other relief this Court deems appropriate.

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 23rd day of January, 2018.

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By: /s/ Alan B. Rose
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and C.F., Minors; and Max Friedstein
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

August 23, 2017

CASE NO.: 4D17-1932

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that on July 19, 2017, this court ordered appellant to show cause why sanctions should not be imposed. Having considered appellant's August 8 and August 18, 2017 partial responses and motions for extension of time to respond, we deny the request for extension of time in the August 18, 2017 motion (we granted a short extension requested in the August 8, 2017 motion) and determine that sanctions are appropriate. For the reasons set forth in the July 19, 2017 order to show cause, we now impose sanctions pursuant to *Johnson v. Bank of New York Mellon Trust Co.*, 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013). The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented.

Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Ralph S. Janvey
Albert Gortz
Eliot Ivan Bernstein
Theodore Stuart Bernstein
James Dimon
Neil Wolfson
Cbiz Mhm, Llc
Brian Moynihan
Clerk Palm Beach

Brian M. O'Connell
Steven A. Lessne
Kenneth S. Pollock
Peter Marshall Feaman
Dennis McNamara
Joseph M. Leccese
Byrd "biff" F. Marshall, Jr.
Lisa Friedstein
Pamela Beth Simon
William McCabe
Stp Enterprises, Inc.
Heritage Union Life Ins.
Life Insurance Concepts

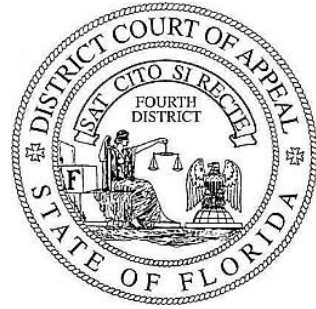
Mark R. Manceri
Charles D. Rubin
John Pankauski
Donald R. Tescher
Kimberly Moran
Hunt Worth
Robert Spallina
Jill Iantoni
Dennis G. Bedley
Gerald Lewin
Lindsay Baxley
David Lanciotti
T&s Registered Agents, Llc

ka



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



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 IH
HON. ROSEMARIE SCHER
LC NO. 502014CP003698XXXXNB

Plaintiff(s)

v.

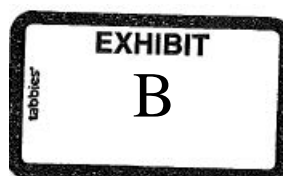
ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth (4th) District Court of Appeals from the Order of Palm Beach County Judge Rosemarie Scher sitting in the Probate Division dated December 06, 2017



titled “ORDER ON (i) TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT (ii) APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., J.A.B., AND JO.B, AND (iii) DETERMINE COMPENSATION FOR GUARDIAN AD LITEM [D.E. #498]; (iv) MOTION TO DIRECT PAYMENTS FOR BENEFIT OF ELIOT'S CHILDREN TO COURT REGISTRY IN LIEU OF APPOINTING TRUSTEE; AND (v) TO DETERMINE COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN [D.E. 724)” (EXHIBIT 1) and hereby appeals from each and every part of said Order.

Dated: January 06, 2018

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 6th day of January, 2018.

By: **/s/ Eliot Ivan Bernstein**
Eliot Ivan Bernstein

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