

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

CASE NO. 502012CP004391XXXXNBIH
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

TRUSTEE'S MOTION TO STRIKE NOTICE OF APPEAL

Trustee, Ted S. Bernstein ("Trustee"), files his Motion to Strike Eliot Ivan Bernstein's ("Eliot") Notice of Appeal [DE 802], for violating the Fourth District's ruling prohibiting further *pro se* appeals, and states:

1. The Court is familiar with the history of this case and issues with Eliot. Briefly, 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."

2. The Sanction Order states: "the Clerk of this Court [the Fourth DCA] 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.***"

3. Despite the Sanction Order, on May 26, 2018, Eliot *pro se*, filed another Notice of Appeal [DE 802] not signed by a lawyer, seeking to appeal this Court's *Order on Motion to Approve Mediation Settlement Agreement with Tescher & Spallina, P.A.* [D.E. 797] (the "Order"). A copy of the Notice of Appeal is attached as Exhibit "B."

4. The Notice of Appeal directly violates 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.

5. The clerk of the Fourth DCA rejected Eliot's filing [DE 804]. A copy of the clerk's rejection is attached as Exhibit "C."

6. This is important to the Trustee because the settling parties' payment obligation to the Estate of Simon Bernstein is triggered by there being a final non-appealable order or the resolution of all appeals. While the Clerk of the Fourth DCA has rejected the Notice of Appeal, the notice remains of record and pending, and the settling parties' require that the Notice of Appeal be stricken from this Court before paying the amounts due under the settlement.

7. This should be a perfunctory and ministerial act by this Court, because "once a mandate issues to the trial court . . . the trial court's role becomes purely ministerial; its function is limited to implementing and effectuating the appellate court's order or decree." *Milton v. Keith*, 503 So. 2d 1312, 1314 (Fla. 3d DCA 1987)(citing, *O.P. Corp. v. Village of N. Palm Beach*, 302 So. 2d 130 (Fla. 1974).

WHEREFORE, Trustee requests that this Court enter an order striking DE 802, Eliot's Notice of Appeal.

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; E-mail Electronic Transmission; FedEx; Hand Delivery this 4th day of June, 2018.

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By: /s/ Alan B. Rose
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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.

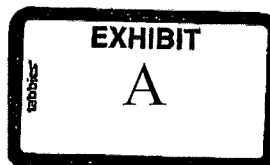
Served:

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
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Byrd "biff" F. Marshall, Jr.
Lisa Friedstein
Pamela Beth Simon
William McCabe
Stp Enterprises, Inc.
Heritage Union Life Ins.
Life Insurance Concepts

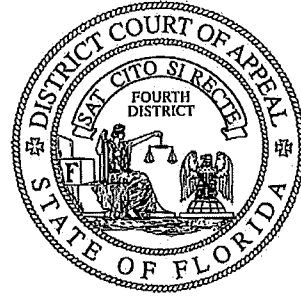
Mark R. Manceri
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John Pankauski
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Hunt Worth
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Gerald Lewin
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T&s Registered Agents, Llc

ka



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE CIRCUIT COURT OF
THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH
COUNTY, FLORIDA

LC NO. 502012CP004391XXXXNB
PROBATE DIVISION IH
HON. ROSEMARIE SCHER

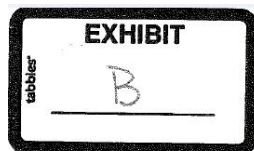
IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

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 RETIRED Senior Judge John Frusciante sitting in for Judge Rosemarie Scher in the Probate Division dated April 27, 2018 titled "ORDER ON MOTION TO APPROVE MEDIATION SETTLEMENT AGREEMENT WITH TESCHER &



SPALLINA, P.A. [D.E. 2451” (EXHIBIT 1) and hereby appeals from each and every part of said Order.

Dated: May 26, 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 26th day of May, 2018.

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Markisen, Catherine R

From: COC_DM-eappeals
Sent: Friday, June 01, 2018 10:46 AM
To: Clerger, Marie; Farrell, Holly A; Guzman, Karla M; Markisen, Catherine R
Subject: FW: Pleading Rejected On Case: Unknown

-----Original Message-----

From: eFile4DCA@flcourts.org [mailto:eFile4DCA@flcourts.org]
Sent: Friday, June 01, 2018 10:01 AM
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Subject: Pleading Rejected On Case: Unknown

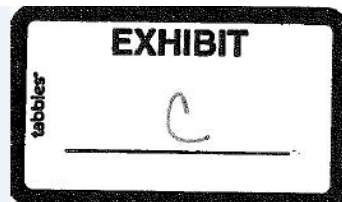
Your Notice of Appeal Filed has been rejected by the Clerks office.

DCA Case No:
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN LT Case No :

Reason:
Your filing is rejected because the party has been prohibited from filing in this Court.

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CIRCUIT CIVIL DIVISION

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Markisen, Catherine R

From: COC_DM-eappeals
Sent: Friday, June 01, 2018 10:46 AM
To: Clerger, Marie; Farrell, Holly A; Guzman, Karla M; Markisen, Catherine R
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From: eFile4DCA@flcourts.org [mailto:eFile4DCA@flcourts.org]
Sent: Friday, June 01, 2018 10:01 AM
To: COC_DM-eappeals <eappeals@mypalmbeachclerk.com>
Subject: Pleading Rejected On Case: Unknown

Your Determination of Indigent Status has been rejected by the Clerks office.

DCA Case No:
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN LT Case No :

Reason:
Your filing is rejected because the party has been prohibited from filing in this Court.

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