

**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.: 2014CP003698

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART JOSHUA BERNSTEIN'S
(i) MOTION FOR DISBURSEMENT FROM THE COURT REGISTRY TO
THE BENEFICIARY [DE 348] AND (ii) PETITION FOR DISBURSEMENT
FROM THE COURT REGISTRY TO THE BENEFICIARY [DE 349]**

THIS CAUSE came before the Court for evidentiary hearing on July 24, 2019, upon (i) *Beneficiary's Motion for Disbursement from the Court Registry to the Beneficiary* filed on December 11, 2018 [DE 348]; and (ii) *Beneficiary's Petition for Disbursement from the Court Registry to the Beneficiary* filed January 29, 2019 [DE 349] (the "Petitions"). The Court, having reviewed the Petitions and relevant parts of the record, having received sworn testimony from Joshua Bernstein, having entertained argument of counsel and pro se parties, and being otherwise fully advised in the premises, does hereby **ORDER AND ADJUDGE**:

1. The Motions are granted in part and denied in part, as set forth below.

Background

2. The Court has previously entered an Order dated December 6, 2017 [DE 295] directing certain proceeds be deposited into the court registry. For the parties' and the Court

convenience and ease of reference, the relevant parts of Simon's Trust are appended as Exhibit

"A" and the relevant parts of the Order are set forth below:

4. Based upon the evidence addressed in the Simon Trust order, and because this Court already has determined (i) Eliot Bernstein's actions were adverse and destructive to his children's interest (in connection with appointment the Guardian Ad Litem), and (ii) it will be difficult or impossible to find a replacement Trustee, the Court reluctantly directs all funds from the Shirley Bernstein Trust to be paid for the benefit of Eliot's Children shall be deposited into the Registry of the Court, under the terms and conditions set forth in this Order.

* * * *

6. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds from the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children, and such funds will be released under the following conditions:

a. if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust (the relevant parts of which are attached as Exhibit A).

b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances; and

c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

3. Under the terms of the December 6, 2017 Order [DE 295], the Trustee has made three deposits into the court registry as shown on the Court's docket:

\$ 60,000.00 on August 1, 2018 [DE 325];

\$ 69,751.12 on August 1, 2018 [DE 326]; and

\$ 17,000.00 on October 31, 2018 [DE 342],

\$146,751.12 total, less applicable court registry fees.

Request to Disburse Funds to Lalit K. Jain

4. Joshua has now requested that entire balance in the court registry be delivered by U.S. Mail to Lalit K. Jain, Esq. as Attorney FBO Joshua Bernstein. See DE 348, ¶6; DE 349, ¶6. The Court denies that part of each Motion.

5. Based upon various documents authored by Mr. Jain, which are on file in this or the related Palm Beach County probate case as part of filings by Joshua and Eliot Bernstein, Mr. Jain does not appear to be suitable as a trustee or custodian of Joshua's portion of these trust funds. Mr. Jain is not a member of the Florida Bar, and is not subject to the jurisdiction or supervision of this Court. Moreover, Joshua testified under oath at the hearing that Mr. Jain assists Joshua and also his father Eliot Bernstein in preparation of various court filings, including filings made by Joshua and Eliot on July 23, 2019 [*see, e.g.*, D.E. 357] which contain inappropriate content. Joshua's testimony confirmed his review and support of such filings. The testimony of Joshua, if true, also demonstrates that Mr. Jain is preparing court filings for an otherwise *pro se* litigant in Florida, and perhaps engaging in the unlicensed practice of law.

6. Given the appearance of Mr. Jain from his writings, and the fact he was selected by and is actively assisting Eliot, the Court agrees with the Trustee that a prudent and careful

person would have substantial doubt as to the suitability of Mr. Jain to hold Joshua's trust funds. For those reasons, the Court declines to release 100% of Joshua's trust funds to Mr. Jain. This ruling is without prejudice to Joshua proposing a suitable trustee.

Request of Joshua for a partial distribution

7. Joshua also has requested a partial release of funds for certain educational and transportation needs. During his testimony, Joshua was unable to provide the Court with an estimate of how much he currently requires to meet his "Needs" (health, education, maintenance and support) and "Welfare" under the Trust. The Trustee has advised the Court that he supports a reasonable withdrawal of funds if (i) such funds are used for the benefit of Joshua; (ii) their use is consistent with Simon's wishes and the instructions as set forth in Simon Bernstein's Trust; and (iii) the funds are not depleted too rapidly given Joshua's lack of money management experience at his current age 21.

8. Moreover, to avoid an undue burden on the Court, the Trustee has advised the Court through the submission of its proposed order that it has no objection to an initial distribution to Joshua, with instructions to Joshua (i) to employ a reasonable effort to use the funds only in accordance with the Trust requirements; and (ii) to not to deliver the funds to his father, Eliot, or Mr. Jain. The Trustee believes, and the Court agrees, such a procedure will balance the need to expedite the release of funds for Joshua's benefit, while avoiding the need for the Court to engage in a lengthy and intensive review of Joshua's financial requirements at this time. The Trustee has further suggested Joshua be instructed to keep some record of how the funds are spent, and to provide such record (and appropriate backup documents) if and when he makes a second or subsequent request for a withdrawal, which will provide the Court with more

and better information from which to make a decision on such later requests. The Court agrees with the Trustee's suggested approach.

8. As to the amount of the initial distribution, the Trustee has suggested in its proposed Order that the Court authorize the release of something in the range of \$10,000 (approximately 7% of Joshua's funds in the court registry) to \$22,000 (approximately 15% of Joshua's funds), in the sound discretion of the Court. The Court finds an amount in such range to be a reasonable initial distribution.

9. **ACCORDINGLY**, the Court hereby **ORDERS** the Clerk of the Court to deliver from the registry funds held for the benefit of Joshua Bernstein the sum of \$15,000.00. Joshua is **ORDERED** to use such funds consistent with the attached terms of the Trust and to maintain appropriate records of such expenditures. In making any future withdrawal requests, Joshua shall include a summary that demonstrates how he spent the prior distributed funds, and the Court may take into account how such funds have been actually used by Joshua, as well as other factors (including how quickly all of the trust funds set aside for Josh would be fully expended).

10. Except as expressly granted above, the Motions are **DENIED**. These rulings are without prejudice to Joshua proposing a suitable replacement trustee consistent with ¶6(a) of the December 6, 2017 Order quoted above.

DONE AND ORDERED in Chambers, Palm Beach County, Florida, on July 29, 2019.



HONORABLE DINA KEEVER-AGRAMA
Circuit Court Judge

cc: All parties on the attached service list

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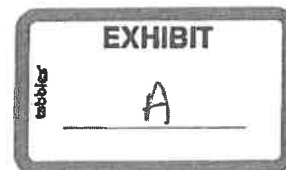
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SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES
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C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:



raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to



such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

