

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

IN RE: GUARDIANSHIP OF

PATRICIA A. SAHM

File No.
502023GA000245XXXXMB
Division: IZ

An Incapacitated Person

**PETITION FOR AUTHORITY TO TERMINATE AMBER PATWELL, ESQUIRE, AS
COUNSEL FOR WARD**

COMES NOW Petitioner, CHARLES J. REVARO, the limited guardian of the person and property of the Ward, PATRICIA A. SAHM (the “Petitioner” or “Guardian,” and the “Ward,” respectively), and hereby petitions this Honorable Court for authority to terminate attorney Amber Patwell, Esquire (“Ms. Patwell”), as counsel for the Ward in these proceedings, and in support thereof states as follows:

1. Petitioner was appointed as the limited guardian of the person and property of the Ward on June 27, 2023, and *Letters of Limited Guardianship* were issued to Petitioner on July 13, 2023. *See* D.E. #21 and 28.

2. Among the powers granted to the Guardian is the power to contract, manage and dispose of Ward’s property and to sue and defend lawsuits.

3. Pursuant to the *Order Determining Limited Incapacity* dated June 27, 2023, the Ward’s right to sue and defend lawsuits was delegated to the Petitioner. *See* File #502023MH001072XXXXMB, D.E. #27.

4. On February 23, 2018, the Ward, along with her late husband, Walter E. Sahn, initiated a civil action against Bernstein Family Realty, LLC (*Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC and All Unknown Tenants*, Case No.

502018CA002317XXXXMB) (the "Foreclosure Proceedings") to recover an outstanding debt owed under a promissory note between the parties.

5. The Ward's husband, Walter E. Sahn, passed away on January 5, 2021, rendering the Ward as the only remaining plaintiff in the Foreclosure Proceedings. Then why is judgment in Walter name issued a yr after death?

6. The Guardian terminated Ms. Patwell via letter dated July 31, 2023,⁴ over concerns that Ms. Patwell participated in settlement negotiations in the Foreclosure Proceedings (the "Purported Settlement Agreement") and possibly participated in procuring the Purported Settlement Agreement from the Ward to the detriment of the Ward and her estate, at a time when the Ward was incapacitated. The settlement protected the ward from losing everything in the foreclosure due to Joanna fraud on state and fed courts.

7. In fact, the Purported Settlement Agreement was entered into on or about May 22, 2023, on the eve of the hearing on the incapacity and guardianship hearing. A copy of the Purported Settlement Agreement is attached hereto as **Exhibit A**. The settlement was being worked on for several weeks prior.

8. Additionally, and perhaps most egregiously, the Purported Settlement Agreement was entered into eighteen (18) days *after* the examining committee appointed by this Court had tendered their Reports finding that the Ward lacked the capacity to contract, to sue or be sued, and to manage/dispose of her property. *See* File #502023MH001072XXXXMB, D.E. #12, and 23. The Report of Dr. Stanley Bloom was not filed with the Clerk of Court and is attached hereto as **Exhibit B**. Stanley Bloom is not a Florida licensed attorney, see Sugar report.

9. Further, the Guardian has a reasonable basis to believe, based upon the testimony of Patricia A. Sahn, Jr. at a hearing held on August 14, 2023, that Ms. Patwell's representation of the Ward may have commenced as a result of a recommendation or coordination by the Defendants in

⁴ Amber Patwell was substituted as counsel for the Ward in place of Court Appointed Counsel, Laura Burkhalter. The Guardian finds the circumstances around this substitution to be suspect.

The Ward was upset with the examing committee and lawyer as they appeared at her house at a time before she was served any papers in these matters and was frieghtened at what her daughter Joanna was doing. Joanna had told her drive and meet her for lunch and instead took her to WPB to be examined by lawyers to put her in a GAL.

4877-1121-1387, v. 6

the Foreclosure Proceedings. The basis for Petitioner's belief is as follows: This is a belief

a. On December 23, 2021, the court in the Foreclosure Proceedings entered a *Final Judgment of Foreclosure* and set a sale date of April 20, 2022 (foreclosure D.E. #88).

b. The *Final Judgment of Foreclosure* spurred a flurry of pleadings by several of the Bernsteins (some of whom were represented by counsel and some of whom were acting *pro se*). Bernstein family members filed several motions for rehearing and to vacate the final judgment, all of which were denied. Several of the Bernstein's filed an appeal, then resorted to filing emergency motions to stop the foreclosure sale. The foreclosure docket does not reflect that orders were ever entered on any of the emergency motions.

c. On October 27, 2022, the appeal was dismissed for lack of prosecution (foreclosure D.E. #194). The sale date was reset to April 4, 2023. One day before the sale was scheduled to proceed, Eliot Bernstein (who by this time had retained Ms. Garcia to represent him in the foreclosure proceedings), filed a *Suggestion of Bankruptcy* (foreclosure D.E. #204), which upon information and belief resulted in an automatic cancellation of the foreclosure sale.

d. In response to Eliot Bernstein's suggestion of bankruptcy, the Ward's daughter Joanna Sahn, acting in her capacity as personal representative of the estate of Walter Sahn and attorney-in-fact for the Ward, filed her *Expedited Motion for Ex Parte Relief from the Automatic Stay* (attached as **Exhibit C**).

e. Ten days later, the Ward purportedly executed a Florida Power of Attorney Revocation (attached as **Exhibit D**). At the hearing on the *Petition for Injunction against Exploitation of a Vulnerable Adult*, the Ward's daughter, Patty Sahn Jr., testified that an unknown notary arrived at the Ward's house with the revocation paperwork in tow, and that Patty Jr.

suspected the notary was sent by the Bernsteins.⁵

f. On April 14, 2023, the Bankruptcy Court granted Joanna's motion and lifted the automatic stay, which read in pertinent part:

Debtor Eliot Ivan Bernstein's purpose in filing the above-captioned bankruptcy case was not to reorganize his assets and liability to confirm a chapter 13 bankruptcy plan. Rather, the purpose was to obtain the cancellation of the April 4, 2023 foreclosure sale of the Real Property as part of a continuing bad faith scheme to delay and hinder the Movants with respect to the foreclosure action against the Real Property.

See **Exhibit E**.

g. The instant proceedings were initiated on April 17, 2023. Attorney Laura Burkhalter, Esq., was court appointed to represent the Ward. However, on May 2, 2023, Amber Patwell, Esq. ("Ms. Patwell") filed her Notice of Appearance in the incapacity proceedings (MH D.E. #10). Ten days later, Ms. Patwell and Ms. Burkhalter filed a *Stipulation for Substitution of Counsel* (MH D.E. #11).⁶ Robert Sweetapple never met with or represented the Ward, he was representing Joanna Sahn with an undisclosed POA

h. On April 18, 2023, Robert Sweetapple, Esq., who had represented the Ward in the foreclosure proceedings since their inception, filed a *Request for Judicial Notice*, which (a) requested that the foreclosure court take judicial notice of the then-pending incapacity and guardianship proceedings and (b) alerted the foreclosure court of the alleged revocation of the Ward's power of attorney, which the Ward could not recall signing. See *foreclosure* D.E. #206.

i. On May 16, 2023, Eliot voluntarily dismissed his bankruptcy proceedings.

⁵ The Ward purportedly executed two Florida Power of Attorney Revocations. The first, dated March 28, 2023, purports to revoke a power of attorney dated December 2021. The second, dated April 13, 2022, purports to revoke any power of attorney executed between July 2020 and February 2023.

⁶ Ms. Patwell never filed a Notice of Appearance or a Stipulation for Substitution of counsel in the guardianship matter but did file pleadings in the guardianship.

j. On May 22, 2023—the day the Ward purportedly signed an agreement “settling” the foreclosure—Amber Patwell, Esq., filed a *Notice of Appearance* on behalf of the Ward in the foreclosure proceedings (foreclosure D.E. #207). Attorney Sweetapple never moved to withdraw from the foreclosure case, nor was a stipulation for substitution of counsel ever filed in the foreclosure action. Sweetapple could not represent Ward as he never was and once Joanna POA revoked he could no longer represent the Ward as she was never really his client. See Statement of Patricia Sahn Sr.

k. Two days later, Ms. Garcia, on behalf of the Bernsteins, filed a *Motion for Relief from Judgment* (foreclosure D.E. #208) in yet another attempt to avoid the foreclosure sale. In that *Motion for Relief*, Ms. Garcia writes that “Attorney Sweetapple refuses to withdraw although Patricia Sahn signed a stipulation.” Again, such stipulation has never been filed in the foreclosure action, nor was the purported stipulation attached as an exhibit to the *Motion for Relief*.

l. On June 6, 2023, the Ward was “evaluated” by Dr. Sam Sugar. **Exhibit F.** Dr. Sugar is the founder and president of Americans Against Abusive Probate Guardianship (AAAPG). Dr. Sugar is well-known in Palm Beach County as an outspoken critic of guardianship. Although it is unknown who arranged for this evaluation, Ms. Patwell must have been aware of it, because she referenced the evaluation in a pleading she also filed on June 6, 2023. See *Response to Petition for Appointment of Emergency Temporary Guardian* (GA D.E. E19), ¶ 14.

m. There appears to be some connection between Eliot Bernstein and Dr. Sugar going back to at least 2017, when Eliot Bernstein was promoting an anti-guardianship event hosted by Dr. Sugar. **Exhibit G.**

n. Moreover, Patty Jr. testified at the final hearing on the *Petition for Injunction against Exploitation of Vulnerable Adult* that Ms. Patwell had been recommended to represent the Ward by “the guardianship task force.”

Hillary Hogue of the Guardianship Task Force recommended Amber Patwell as a good and honest attorney working for the rights of Wards in PBC. She also recommended her friend Sam Sugar to do an unbiased evaluation of Ward as several problems with the examining committee were found.

10. The Guardian believes that the “guardianship task force” is in all likelihood AAAPG, and that Ms. Patwell was brought into the case not only through AAAPG, but at the behest of Mr. Bernstein, who has been fighting the foreclosure action tooth and nail. It is clear from the procedural history set forth above that after Eliot Bernstein’s last attempt to stay the foreclosure proceedings was denied by the bankruptcy court. It is, frankly, too much of a coincidence to believe that when Mr. Bernstein had finally run out of options to fight the foreclosure sale, Ms. Patwell—a St. Petersburg-based attorney—entered the case out of nowhere, and all of a sudden, the Ward’s position changed, and the case settled in an extremely favorable way for the Bernsteins.

11. To put it even more bluntly, the Guardian is concerned that Ms. Patwell is using her representation of the Ward to promote the Bernsteins’ interests.

12. Based on the above concerns, the Guardian terminated Ms. Patwell; however, Ms. Patwell maintains that the Guardian lacks such power since her representation of the Ward was based upon a “contract”. Despite a request from undersigned counsel, Ms. Patwell has failed to produce a copy of this “contract.”. The Court permitted Ms. Patwell to attend the above-referenced hearing held on August 14, 2023, and reserved ruling on the status of Ms. Patwell’s representation of the Ward for a future hearing. A copy of the Guardian’s termination letter to Ms. Patwell is attached hereto as **Exhibit H**.

13. Based upon the above, Petitioner now seeks authorization from the Court to terminate Ms. Patwell.

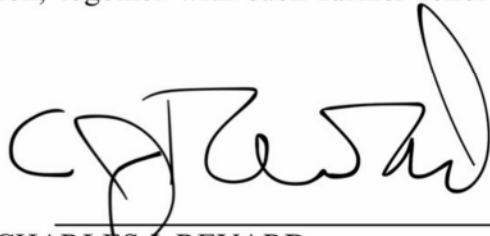
14. Upon termination of Ms. Patwell, and with the approval of this Court, the Ward would not be without representation, as the Guardian has filed a *Petition for Authority to Retain*

Counsel for Ward previously (D.E. #57) to ensure that the Ward is independently represented at this stage in the proceedings.

15. Pursuant to §744.441(1)(a), Florida Statutes, upon approval of the Court, a Guardian may “refuse performance of a ward’s contracts that continue as an obligation of the estate, as he or she may determine under the circumstances.”

WHEREFORE, Petitioner respectfully requests that this Honorable Court enter its order (1) ratifying and confirming the Guardian’s prior termination of Amber Patwell, Esquire, as counsel for the Ward, (2) terminating Ms. Patwell, or (3) authorizing the Guardian to terminate Ms. Patwell as counsel for the Ward in these proceedings, and execute any documents which may be necessary to effect such termination, together with such further relief as the Court deems appropriate.

Signed on August 28, 2023



CHARLES J. REVARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 28 day of August 2023, via e-service through the e-portal to Eileen T. O’Malley, Esq., Nelson Mullins Riley & Scarborough, LLP, 360 South Rosemary Ave., Suite 1410, West Palm Beach, FL 33401 (eileen.omalley@nelsonmullins.com) (counsel for Joanna Sahn, Trustee); Inger Garcia, Esquire, 7040 Seminole Pratt Whitney Road, #25-43, Loxahatchee, Florida 33470 (attorney@ingergarcia.com, serviceimglaw@yahoo.com, and attorney@floridapotlawfirm.com) (counsel for Patricia A. Sahn, Jr.); and Amber Patwell, Esquire, 136 4th Street North, Suite 201

Guardianship of Patricia Sahn

File #502023GA000245

Guardian's Petition to Terminate Patwell as Counsel for Ward

Page 8 of 8

OFC 356, St. Petersburg, Florida 33701 (amber@aplpinellas.com).

Signed on August 28, 2023

/s/ Kathryn N. Lewis

KITROSER LEWIS & MIGHDOLL, LLC

Mitchell I. Kitroser, Esq., Fla. Bar #995134

Preston Mighdoll, Esq., Fla. Bar #220124

Kathryn N. Lewis Esq., Fla. Bar #59182

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Attorneys for Charles Revard, Limited Guardian

SETTLEMENT AGREEMENT

Interested Parties BERNSTEIN FAMILY REALTY LLC, an LLC, and the BERNSTEIN FAMILY Members, Eliot Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein (hereinafter known as “BFR” or “Bernstein” or “Interested Parties”) and Patricia A. Sahm, as sole owner and surviving spouse of Walter Sahm, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, enter into this Settlement Agreement (the “Agreement”) on this 22nd day of May 2023.

RECITALS:

WHEREAS, ON June 24, 2021, filed on July 1, 2021, an Order Admitting Will to Probate and Appointing Personal Representative Johanna Sahm was entered for Walter E. Sahm, Jr., in Marion County, Case No. 21CP001223AX. The mortgage and note at issue in this settlement are not part of the inventory of the estate of Walter E. Sahm, Jr., has not been assigned or transferred, and the ownership has fully vested in Patricia A. Sahm as surviving spouse. Patricia A. Sahm has full authority to resolve the mortgage and note foreclosure matter. Walter E. Sahm, Jr. died on January 5, 2021. The original note is to be deposited with the attorney of Patricia A. Sahm, and will not be endorsed, transferred, or assigned pending this settlement, except as provided for in this settlement agreement.

WHEREAS, on February 23, 2018, Plaintiffs, Walter E. Sahm and his then wife Patricia A. Sahm, filed a lawsuit for foreclosure on a first mortgage and promissory note, as amended (recorded on April 12, 2012 in the Public Records of Palm Beach County, Florida O.R Book 25132, Page 1051) on Lot 68, Block G, Boca Madera Unit 2, according to the Plat thereof, as recorded in Plat Book 32, Pages 59 and 60, of the Public Records of Palm Beach County, Florida; 2753 NW 34th Street, Boca Raton, FL 33434; Case No. 50-2018-CA-002317, in Palm Beach

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County against Defendants Bernstein Family Realty, LLC, a dissolved LLC, Eliot Bernstein - individually, Candice Bernstein - individually, Eliot Bernstein and Candice Bernstein, As Natural Guardians Of Minor Children Jo., Ja. And D. Bernstein; And All Unknown Tenants, Joshua Bernstein, Daniel Bernstein, Jacob Bernstein, Brian O'connell, as Successor Personal Representative Of The Estate Of Simon L. Bernstein; Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, Pamela B. Simon, Jill Iantoni, Max Friedstein, and Lisa Friedstein, Individually And Trustees Of The Simon L. Bernstein Revocable Trust Agreement Dated May 20, 2008, As Amended And Restated, to foreclose on a first mortgage.

WHEREAS, Walter E. Sahn, Jr., is now deceased and his surviving spouse Patricia A. Sahn is the only true current party in interest in that mortgage and note in the Palm Beach foreclosure case as "The Walter E. Sahn, Jr. & Patricia A. Sahn Revocable Family Living Trust dated August 31, 1999" and "the Estate of Walter E. Sahn, Jr."

WHEREAS The surviving spouse, Patricia A. Sahn, and the Bernstein family and Bernstein Family Realty LLC, have reached a settlement of the foreclosure on the first mortgage claims between Plaintiffs and Defendants asserted in or relating to the foreclosure Lawsuit herein above, and the release of funds in the Shirley Bernstein trust case that will be partially used toward the satisfaction of this first mortgage.

WHEREAS, the Bernstein family home, the property at issue, to wit: 2753 NW 34th Street, Boca Raton, FL 33434, was set for sale in the West Palm Beach foreclosure case on April 4, 2023, at 10:00 a.m., based on a Final Judgment dated December 23, 2021, and this settlement will result in the foreclosure case being abated/stayed pending full and final payment of the settlement; which will then result in a full satisfaction of mortgage being recorded, and a dismissal with prejudice of the foreclosure case.

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WHEREAS, BFR and the Bernstein family's counsel represents that the funds to pay the full payment on the Settlement Amount referenced below will be the subject to a hearing for its release from the court registry in front of Judge Laura Johnson in West Palm Beach in Case No. 50-2014-CP-003698-XXXX-NB, in the Shirley Bernstein trust matter. The attorney for the Patricia A. Sahm will attend the zoom hearing and fully support the settlement agreement, the release of funds, and will assist with the conclusion of the foreclosure case as the only true Party in interest of this first mortgage and note.

WHEREAS the Bernstein Family Realty LLC is a Florida LLC, reinstated, Daniel Bernstein, Jacob Bernstein, and Joshua Bernstein are the majority owners with the sole right to receive distributions from the LLC. They may be winding up the company's activities and affairs, and are appointed to do so by the mutual unanimous consent of the transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection has the powers of a sole manager under s. 605.0407(3) and is deemed to be a manager for the purposes of s. 605.0304(1). 605.0709. In winding up the affairs of the LLC, Daniel, Jacob, and Joshua Bernstein will take all necessary steps to effectuate this settlement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.

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2. **Payment.**

- a. BFR and the Bernstein family shall pay Patricia A. Sahn, through her attorney's trust account, Amber Patwell, Esq., the total amount of \$225,000.00 from the proceeds released from the court registry, as full and final payment and satisfaction toward the current first mortgage and final judgment. (the "Settlement Amount" or the "Payment").
- b. The full payment shall be \$225,000.00. These funds are currently being held in the Palm Beach Court registry for the benefit of the three Bernstein young men, Daniel, Joshua, and Jacob Bernstein. The parties agree to cooperate at the hearing to be held, to ensure that \$225,000.00 of the funds are released directly to the trust of account of Amber Patwell, Esq. as directed in the court order. The entire remaining balance of the funds in the court registry will be released to the Trust Account of Inger M. Garcia IOTA.
- c. BFR and the Bernstein family shall pay the entire Settlement Amount via check issued directly from the clerk registry to the trust account of Amber Patwell Law, Esq.
- d. If court orders are necessary in either the Walter E. Sham, Jr. probate case in Marion County, or the Palm Beach foreclosure case, or in the Shirley Bernstein trust case; the parties agree to fully cooperate and file any needed joint agreed motions to confirm the settlement, to release the funds as agreed, and to file the dismissal of the foreclosure. No other party or person can interfere with this agreement, cause any further delays in releasing said funds, or cause the

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property at issue to sell in the foreclosure case. There are no other interested parties to these funds or to the home at issue.

- e. The parties will cooperate jointly with any title company or lender per this agreement if needed.
- f. At the final payment clearance, a full satisfaction will be recorded, and the pending foreclosure lawsuit will be dismissed with prejudice. The parties will also appear before Judge Bell in the foreclosure if needed to inform the court of the settlement and to file the dismissal with prejudice and to record the satisfaction of mortgage. No party or other person is to interfere with this settlement or cause the property to be sold.

3. Stay/Abatement/Dismissal of the Lawsuit. Within 3 days of the payment following the hearing in front on Judge Laura Johnson, the parties shall file the satisfaction of judgement and dismissal with prejudice. Although the estate confirmed it has no rights to this note and mortgage, if the agreement needs to be approved in the estate case, the parties will cooperate to achieve that resolve.

4. Costs and Expenses of the Lawsuit. The Parties each agree to bear their own attorneys' fees, costs, and expenses incurred in connection with this Agreement.

5. No Assignment. The Parties to this Agreement represent and affirm that neither has assigned to any third-party any of the claims or causes of action it has, had, or may have against each other.

6. Advice of Counsel. The Parties to this Agreement hereby acknowledge, agree, represent, and warrant: (i) that such Party has had the advice of counsel of such Party's own choosing in negotiations for, and in the preparation of, this Agreement; (ii) that such Party has read

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this Agreement or has had the same read to such Party by its counsel; and (iii) that such Party enters into this Agreement voluntarily and is fully aware of this Agreement's contents and legal effect.

7. **Severability.** If any provision of this Agreement is rendered invalid for any reason, or has been rendered unenforceable in any jurisdiction, all other provisions of this Agreement shall nevertheless remain in full force and effect in such jurisdiction, and all provisions of this Agreement shall remain in full force and effect in all other jurisdictions. Upon determination that any provision of this Agreement is invalid or unenforceable, this Agreement shall be amended to achieve the original intention of the Parties as closely as possible.

8. **Entire Contract & Amendment.** This Agreement supersedes all prior negotiations, settlement discussions, and representations and contains the complete and entire Agreement between the Parties to this Agreement with respect to the matters contained herein. This Agreement may be modified only by a written document, signed by all Parties hereto.

9. **Governing Law.** This Agreement shall be governed and interpreted under Florida law.

10. **Forum Selection.** Any dispute arising out of or relating to this Agreement shall be brought in the Fifteenth Judicial Circuit Courts in and for Palm Beach County, Florida.

11. **Attorneys' Fees.** Should any Party to this Agreement need to resort to legal proceedings of any kind to enforce this Agreement, the prevailing party shall recover all costs and attorneys' fees from the non-prevailing party or parties.

12. **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any terms, covenants, conditions, or agreements contained herein.

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13. **Counterparts.** This Agreement may be executed in separate counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Facsimile copies, Portable Document Format (PDF) copies of signatures, and any signature made or delivered by a Party through electronic mail or other digital means (including any signature created, populated, or used by a Party through DocuSign or other similar electronic or digital signature program) shall be deemed effective and an original for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

Patricia A. Sahn <i>Patricia Sahn</i>
Date: <u>5-22-23</u>

Bernstein Family Realty LLC, a Florida LLC <i>Jane Bernstein, Member</i>
Date: <u>05-22-2023</u>

Eliot Bernstein <i>[Signature]</i>
Date: <u>5/22/23</u>

Candice Bernstein <i>[Signature]</i>
Date: <u>5-22-23</u>

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<p>Jacob Bernstein</p> <p><u>JB</u></p> <p>Date: <u>05-22-23</u></p>	<p>Joshua Bernstein</p> <p><u>JB</u></p> <p>Date: <u>5/22/23</u></p>
<p>Daniel Bernstein</p> <p><u>DNB</u></p> <p>Date: <u>5/22/23</u></p>	

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

Case No.502023MH001072XXXXMB

Division: Probate/Mental Health

IN RE: GUARDIANSHIP

Alleged Incapacitated Person PATRICIA A SAHM _____ /

REPORT OF EXAMINING COMMITTEE MEMBER

F.S. 744.331(3)

Having been appointed to examine PATRICIA A SAHM _____ whose address is 21843 TOWN PLACE DRIVE BOCA RATON FL 33433 _____, to determine if he/she is capable of exercising his/her rights regarding person and/or property and having made a comprehensive examination on 5/5/23 _____ at ABOVE ADDRESS _____, I submit the following report: _____

1 PHYSICAL DIAGNOSIS: 82 y/o in no acute distress . A physical examination was not indicated since it would not have aided in the formulation of my opinion.

2.MENTAL DIAGNOSIS: AIP has loss of long or short term memory. AIP is unclear regarding her finances and does not know specifics regarding her assets and how much money she has. She is unaware of the guardianship , does not understand the concept and does not remember receiving the copies of the petition, nor does she remember seeing her attorney. She does not know what medications she is taking or what they are for. She does not know who the governor or the Vice President is. She cannot multiply nine times seven or how many quarters

EXHIBIT B

are in six dollars. She could not subtract seven from one hundred serially. She is not aware of the litigation that is occurring with regard to her deceased husband's estate. Her MOCA score is 18 out of 30.

3. PHYSICAL AND/OR MENTAL PROGNOSIS:

Fair to good

4.0 RECOMMENDED COURSE OF TREATMENT:

AIP is in good physical health and can continue to live independently.

Case No. 502023MH001073XXXXMB

Division: Probate/Mental Health

IN RE: PATRICIA A SAHM

_____/ **Alleged Incapacitated Person**

5.0 FUNCTIONAL ASSESSMENT: Is the person able to do the following:

(Brief Comment)

Use the telephone YES

Travel alone of public transportation NO

Drive own car NO

Shop alone for food and clothing YNO

Prepare own meals YES

Do housework YES

Take medication NO

Handle own money NO

Dress and undress YES

Take care of personal appearance YES

Take care of bathroom hygiene YES

Socialize with friends YES

Case No.502023MH001073XXXXMB

Division: Probate/Mental Health

IN RE: PATRICIA A SAHM

_____/_____
Alleged Incapacitated Person

6.0 the alleged incapacitated person LACKS the ability to exercise the following rights:

(Check those applicable)

- | | |
|--|---|
| <input type="checkbox"/> to vote | <input checked="" type="checkbox"/> to determine his/her own residence |
| <input checked="" type="checkbox"/> to marry | <input checked="" type="checkbox"/> to consent to medical treatment |
| <input checked="" type="checkbox"/> to contract | <input checked="" type="checkbox"/> to apply for government benefits |
| <input checked="" type="checkbox"/> to have a driver's license | <input checked="" type="checkbox"/> to sue or be sued |
| <input checked="" type="checkbox"/> to travel | <input checked="" type="checkbox"/> manage/dispose of property |
| <input checked="" type="checkbox"/> to seek employment | <input type="checkbox"/> to make decisions about his/her social environment |

7.0 the following persons were present during the time of the examination:

- A. _
- B. STEHANIE CHESHIRE
- C. BRENNAN CHESHIRE _____
- D. _____
- E. _____

F. _____

G. _____

8.0 during the examination, supplied answers posed to the alleged incapacitated person and his/her full names and responses are provided below:

A. ___

B. _____ (Name)

Response: __ CONFIRMED ABOVE

Case No502023MH001073XXXXMB

Division: Probate/Mental Health

IN RE: PATRICIA A SAHM

_____/ **Alleged Incapacitated Person**

C. _____ (Name)

Response: _____

_9.0 The factual basis for the determination that this person LACKS capacity to excursive the rights listed below is: _My visit and evaluation of AIP, a review of the petition, a review with Stephanie Cheshire_

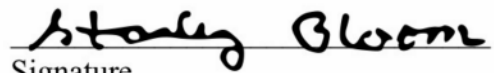
I have determined that PATRICIA A SAHM

A. is incapacitated

B. The scope of guardianship needed is _____ Plenary XX _____ Limited

Under penalties of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

DATED this 5th day of Nay 2023.



Signature

Name: STANLEY BLOOM MD

Address: 10760 NORTHGREEN DR
WELLINGTON FL 33449

Phone: 561-432-2020

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

Eliot Ivan Bernstein,

Case No. 23-12630-EPK

Debtor.

Chapter 13

EXPEDITED MOTION FOR EX PARTE RELIEF FROM THE AUTOMATIC STAY

Joanna Sahn, as personal representative of the estate of Walter Sahn, and Patricia Sahn (the “Secured Creditors”), by and through their undersigned counsel and pursuant to 11 U.S.C. § 362(d)(1), hereby requests that the Court grant immediate relief from the automatic stay on an *ex parte* basis so that the foreclosure sale described herein may proceed. In support, the Creditors state as follows:

1. There is a long-awaited foreclosure sale scheduled to occur on **April 4, 2023** at **10:00 a.m.** regarding the real property located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 (the “Real Property”) in the case styled Walter E. Sahn and Patricia Sahn vs. Bernstein Family Realty, LLC, bearing Case No. 2018-CA-002317AXX (the “State Court Case”) pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the “State Court”). The Secured Creditors are the holders of the foreclosure judgment concerning the Real Property entered in the State Court Case.

2. For the reasons stated therein, and upon the Creditors’ motion, on July 26, 2022, this Bankruptcy Court, in Case No. 22-13009-EPK, entered its *Order Dismissing Case with Prejudice* (the “Dismissal Order”), a copy of which is attached hereto as **Exhibit A**. Pursuant to the Dismissal Order, Eliot I. Bernstein (the “Debtor”) and others were prohibited from causing any

bankruptcy petition to be filed for or against Bernstein Family Realty, LLC, which is the subject of the State Court Case and which is the owner of the real property.¹

3. On April 3, 2023, the Debtor filed a voluntary chapter 13 bankruptcy petition, thereby commencing the above-captioned case. The Debtor, through attorney Inger M. Garcia, then filed a suggestion of bankruptcy in the State Court Case and Notice to Cancel the foreclosure sale. **Exhibit B.**

4. Such filings reflect the intent of the Debtor to thumb his nose at the Court and further frustrate the efforts of the Secured Creditors. The clear intent of the Court's Dismissal Order was to prevent the Debtor from filing a bankruptcy petition which would further delay the foreclosure and foreclosure sale of the Real Property. *See* Dismissal Order at page 2.

5. Accordingly, the Secured Creditors submit that cause exists under 11 U.S.C. § 362(a) for the Court to enter, on an expedited basis, an order granting the Secured Creditors relief from the automatic stay such that the April 4, 2023 foreclosure sale can proceed.

6. A proposed order is attached hereto as Exhibit C and has been uploaded with the filing of this Motion.

WHEREFORE, the Secured Creditors request that the Court grant relief from the automatic stay and modify the automatic stay to permit the foreclosure sale scheduled for April 4, 2023 concerning the real property located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 to proceed in the State Court Case.

¹ The Court previously found in the Dismissal Order that Bernstein Family Realty, LLC is the owner of the Real Property. An April 3, 2023 search of the Official Records of Palm Beach County, Florida by the undersigned counsel reveals the Real Property is still owned by Bernstein Family Realty, LLC.

ATTORNEY CERTIFICATION

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Notice of Electronic Filing to those parties registered to receive electronic noticing in this case on April 3, 2023 and via U.S. Mail to the Debtor at 2753 NW 34 St Boca Raton, FL 33434 and to the Debtor at Inger Garcia, Esq., FLORIDA LITIGATION GROUP, 7040 Seminole Pratt Whitney Rd. #25, Box 43, Loxahatchee, FL 33470.

SHRAIBERG PAGE P.A.
Counsel for the Secured Creditors
2385 NW Executive Center Drive, #300
Boca Raton, Florida 33431
Telephone: 561-443-0800
Facsimile: 561-998-0047
bss@slp.law

By: /s/ Bradley S. Shraiberg
Bradley S. Shraiberg
Florida Bar No. 121622
Eric Pendergraft
Florida Bar No. 91927

EXHIBIT A



ORDERED in the Southern District of Florida on July 26, 2022.

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

BERNSTEIN FAMILY REALTY, LLC,

Case No. 22-13009-EPK

Debtor.

Chapter 7

_____ /

ORDER DISMISSING CASE WITH PREJUDICE

THIS MATTER came before the Court for hearing on July 20, 2022 upon the *Motion to Dismiss with Prejudice* [ECF No. 52] filed by Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (together, the "Secured Creditors"). Prior to the hearing, Ted S. Bernstein filed his *Response and Joinder of Ted. S. Bernstein, Trustee, to Motion to Dismiss with Prejudice* [ECF No. 60] (the "Joinder"), wherein Ted S. Bernstein joined in the relief requested in the Motion. In addition, two responses in opposition to the relief requested in the Motion were filed by Eliot I. Bernstein, ECF Nos. 55 and 71.

In the Motion, the Secured Creditors request that this case be dismissed with two years' prejudice to both the filing of a voluntary bankruptcy petition by Bernstein Family Realty, LLC

(the “Debtor”) and the filing of an involuntary bankruptcy petition against the Debtor by Joshua Bernstein, Jacob Bernstein, Daniel Bernstein (together, the “Petitioning Bernsteins”) or their parents, Eliot I. Bernstein and Candice Bernstein.

For the reasons stated on the record, having considered the Motion, the Joinder, the responses, and the arguments presented at the hearing, and being otherwise fully advised in the premises, the Court finds as follows:

The Debtor owns one real asset: the single-family home located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 (the “Real Property”). Since prior to the initiation of this case, the Debtor has had no operations or employees. The Debtor has, at most, a few minor unsecured creditors.

This case was initiated when the Petitioning Bernsteins filed an involuntary chapter 11 petition against the Debtor. However, the Petitioning Bernsteins are not creditors of the Debtor, and this case was filed as an involuntary case because the Debtor had been dissolved and had no manager, and thus, nobody to sign a voluntary bankruptcy petition on behalf of the Debtor.

Dissatisfied with rulings by the state court in a foreclosure case resulting in a judgment and the scheduling of a foreclosure sale, the Petitioning Bernsteins—supported by Eliot I. Bernstein and Candice Bernstein—filed this case as a litigation tactic for the sole purpose of getting the effect of the section 362 automatic stay in order to stymie a foreclosure sale of the Real Property. Once such stay was achieved, the Debtor did nothing in this bankruptcy case. Moreover, after this case was converted to chapter 7, the Debtor failed to file schedules as required by the Court’s conversion order,¹ ECF No. 29, and failed to attend its section 341 meeting of creditors on July 6, 2022 despite the Clerk’s notice that such failure may result in dismissal. ECF No. 31.

¹ After schedules filed by Eliot I. Bernstein were stricken, ECF No. 46, Mr. Bernstein filed schedules, purportedly on behalf of the Debtor as its “acting manager.” ECF No. 53. Such schedules show almost nothing in terms useful information.

Given the foregoing, the Court concludes that this case was filed in bad faith and should be dismissed with prejudice.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. 52] is GRANTED.
2. All objections to the Motion, including those filed by Eliot I. Bernstein at ECF Nos. 55 and 71, are OVERRULED.
3. The above-captioned case is DISMISSED with two years' prejudice, from the date of this Order, to filing of, in any United States Bankruptcy Court: (a) any voluntary petition for relief under Title 11 of the United States Code by Bernstein Family Realty, LLC; and (b) any involuntary petition for relief against Bernstein Family Realty, LLC under Title 11 of the United States Code by Eliot I. Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, or Daniel Bernstein.
4. The Court reserves jurisdiction to hear, determine, and enforce the Motion for Sanctions filed by the Secured Creditors at ECF No. 69.

###

Submitted by:

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ependergraft@slp.law

Bradley S. Shraiberg is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.

EXHIBIT B

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

CASE NUMBER: 50-2018-CA-002317-XXXX-MB (AF)

WALTER E. SAHM and Judge Carolyn Bell
PATRICIA SHAM

Plaintiffs,
v.

BERNSTEIN FAMILY REALTY LLC.

BRIAN O’CONNELL, as successor Personal Representative of The Estate of Simon L. Bernstein.
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON;
JILL IANTONI; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually and as Trustees of the Simon L. Bernstein Revocable Trust
Agreement dated May 20, 2008 as amended and restated;

ELIOT BERNSTEIN;
CANDICE BERNSTEIN, Individually and as Natural Guardians of Minor Children JO., JA.,
and D. BERNSTEIN;
AND ALL UNKNOWN TENANTS.

Defendants.

SUGGESTION OF BANKRUPTCY FOR DEFENDANT and NOTICE TO
CANCEL SALE SET FOR April 4, 2023

The law firm of Florida Litigation Group hereby files its Suggestion of
Bankruptcy for Defendant Bernstein in the above referenced action.

1. Defendant has filed a petition for relief under Title 11, United States Code, in the United States Bankruptcy Court in and for the Southern District of Florida, Case Number 23-12630-EPK-13, West Palm Beach Division, Chapter 13.
2. Relief was ordered on April 3, 2023, receipt attached.
3. This action is founded on a claim from which a discharge would be a release of that seeks to impose a charge on the property of the estate.
4. The sale set for tomorrow’s date April 4, 2023 must be cancelled due to this filing in bankruptcy court.
5. This is for informational purposes only and does not constitute a notice of appearance by the undersigned.

WHEREFORE, Defendant suggests that this action has been stayed by the operation of 11 U.S.C.

§ 362.

Dated this April 3, 2023

Respectfully submitted,

By: /s/ Inger M. Garcia

Inger M. Garcia, Esquire

Florida Bar Number: 0106917

FLORIDA LITIGATION GROUP

7040 Seminole Pratt Whitney Rd. #25, Box 43

Loxahatchee, FL 33470

Direct: (954) 394-7461

Service: Attorney@ingergarcia.com

Email: Attorney@floridapotlawfirm.com

Email: serviceIMGLaw@yahoo.com

Counsel for Defendants BFR, Bernstein(s), tenants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing document were filed electronically with the Clerk of Court through the Florida Courts e-filing Portal, which shall serve an electronic copy by e-mail on counsel of record this 3rd day of April 2023.

By: /s/ Inger M. Garcia

Inger M. Garcia, Esquire

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

Eliot Ivan Bernstein,

Case No. 23-12630-EPK

Debtor.

Chapter 13

_____ /

ORDER GRANTING RELIEF FROM AUTOMATIC STAY

THIS MATTER came before the Court upon the *Expedited Motion for Ex-Parte Relief from the Automatic Stay* [ECF No. ____] (the “Motion”) filed by Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (the “Creditors”).

Having reviewed the Motion, being familiar with this particular matter as set forth in prior orders of the Court entered in Case No. 22-13009-EPK at ECF Nos. 57, 79 and 97, and being otherwise fully advised in the premises, the Court finds that, in this particular matter, cause exists to grant the relief sought in the Motion [ECF No. ____] pursuant to 11 U.S.C. § 362(d)(1). Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. ____] is GRANTED.
2. The 11 U.S.C. § 362(a) automatic stay is hereby modified to permit the foreclosure sale scheduled for April 4, 2023 concerning the real property located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 to proceed in Case No. 2018-CA-002317AXX pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

###

Submitted by:

Bradley S. Shraiberg, Esq.
Shraiberg Page P.A.
Attorneys for the Secured Creditors
2385 NW Executive Center Drive, #300
Boca Raton, Florida 33431
Telephone: 561-443-0800
Facsimile: 561-998-0047
bsst@slp.law

Bradley S. Shraiberg is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.

FLORIDA POWER OF ATTORNEY REVOCATION

Use of this form is for the power of attorney of:

PAS - Health Care Powers

PAS - Financial Powers

PAS - Other: Any and All Powers of Attorneys granted to Joanna E. Sahn

I, Patricia A. Sahn PAS., hereby immediately revoke those portions covering decisions of the document titled Power of Attorney, that I previously executed on the ^{any} July of 2020 through Feb., 2023 which appointed Joanna E. Sahn as my agent and unknown individual as my alternate successor agent. I hereby notify said agent(s) and any other interested persons and institutions that all portions of said document are revoked.

This revocation takes effect immediately. A photocopy has the same effect as an original.

This revocation was signed this 13 of April, 2023.

Signature of Principal Patricia A. Sahn

Print Name Patricia A. Sahn PAS.

NOTE: Provide copies to anyone who may have copies of the Power of Attorney that is being revoked. Retain the original of this form in your personal papers.



We, the witnesses, each do hereby declare in the presence of the principal that the principal signed and executed this instrument in the presence of each of us, that the principal signed it willingly, that each of us hereby signs this power of attorney revocation as witness at the request of the principal and in the principal's presence, and that, to the best of our knowledge, the principal is eighteen years of age or over, of sound mind, and under no constraint or undue influence.

Hobensate Laplante
Witness's Signature

Hobensate Laplante
Address

Marie M. Laplante
Witness's Signature

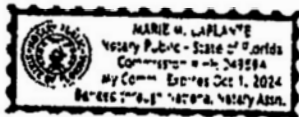
Marie M. Laplante

NOTARY ACKNOWLEDGMENT

[State of Florida
County of Palm Beach]

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 13th (numeric date) day of April (month), 2023 (year), by Patricia A. Sahrn ^{P.A.S.} (name of person acknowledging).

(Seal)



Marie M. Laplante

Signature of Notary Public

Print, Type/Stamp Name of Notary

Personally known: _____

OR Produced Identification: X

Type of Identification Produced: Florida Driver's License





ORDERED in the Southern District of Florida on April 14, 2023.

Peter D. Russin

Peter D. Russin, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

Eliot Ivan Bernstein,

Debtor.

Case No. 23-12630-PDR

Chapter 13

ORDER GRANTING *IN REM* RELIEF FROM AUTOMATIC STAY

THIS MATTER came before the Court upon the *Motion for in Rem Stay Relief* [ECF No. 15] filed by Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (together, the “Movants”).

In the Motion, the Movants seek an order from this Court granting prospective, *in rem* relief from the 11 U.S.C. 362 automatic bankruptcy stay with respect to acts against the following real property, for which the legal description is as follows:

Lot 68, Block G, BOCA MEDERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 through 60, of the Public Records of Palm Beach County, Florida

(the “Real Property”), which is located at 2753 N.W. 34th Street, Boca Raton, Florida 33434.

EXHIBIT E

In seeking such relief, the Movants rely on 11 U.S.C. § 362(d)(4)(B), which provides, in relevant part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

* * *

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

* * *

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Based upon the evidence and presentation the Court heard at the hearing, the Court makes the following findings:

- a. The Real Property is owned by Bernstein Family Realty, LLC.
- b. The Movants are the holders of a final judgment of foreclosure with respect to the Real Property entered in the case styled *Sahm v. Bernstein Family Realty LLC*, Case No. 2018-CA-002317AXX (the “State Court Case”) pending in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the “State Court”).

c. The above-captioned bankruptcy case filed by Debtor Eliot Ivan Bernstein does not invoke the automatic stay with respect to actions against the Real Property owned by non-debtor Bernstein Family Realty, LLC.

d. Attached to the Motion as Exhibit D is a copy of the *Suggestion of Bankruptcy for Defendant and Notice to Cancel Sale Set for April 4, 2023* (the “Suggestion of Bankruptcy”) filed on April 3, 2023 by attorney Inger M. Garcia on behalf of certain defendants, including Debtor Eliot Ivan Bernstein, in the State Court Case. The Suggestion of Bankruptcy is factually false and legal incorrect, and was designed to mislead the State Court and/or the Clerk of the State Court into cancelling the April 4, 2023 foreclosure sale of the Real Property scheduled in the State Court Case, because the Suggestion of Bankruptcy stated that “[t]his action is founded on a claim from which a discharge would be a release of that seeks to impose a charge on the property of the estate.”

e. Debtor Eliot Ivan Bernstein’s purpose in filing the above-captioned bankruptcy case was not to reorganize his assets and liabilities or to confirm a chapter 13 bankruptcy plan. Rather, the purpose was to obtain the cancellation of the April 4, 2023 foreclosure sale of the Real Property as part of a continuing bad faith scheme to delay and hinder the Movants with respect to the foreclosure action against the Real Property.

Based upon the foregoing findings, for the additional reasons stated on the record, and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. 15] is GRANTED.

2. The automatic bankruptcy stay set forth in 11 U.S.C. § 362(a) is modified so that, for the next two years from the date of this Order, no voluntary or involuntary petition filed under Title 11 of the United States Code shall operate as a stay of any act against the Real Property located at 2753 N.W. 34th Street, Boca Raton, Florida 33434, the legal description of which is:

Lot 68, Block G, BOCA MEDERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 through 60, of the Public Records of Palm Beach County, Florida

3. The Movants may file a copy of this Order in the case styled *Sahm v. Bernstein Family Realty LLC*, Case No. 2018-CA-002317AXX pending in the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

4. The Movants shall record a certified copy of this Order in the Official Records of Palm Beach County, Florida with respect to the Real Property.

5. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order shall be immediately effective.

6. The Movant's *Expedited Motion for Ex Parte Relief from the Automatic Stay* [ECF No. 9] is DENIED as moot.

###

Submitted by:

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bsst@slp.law

Bradley S. Shraiberg is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.



Eliot Ivan Bernstein

September 22, 2017 · 🌐



EVERYONE ATTEND



Eliot Bernstein is at **Little Italy Italian Restaurant & Pizza**.

September 22, 2017 · West Palm Beach · 🌐

Eliot says READ ALL ABOUT IT AT PALM BEACH POST *** ALL COURT VICTIMS FL please attend [Sam J Sugar](#) hosted GUARDIANSHIP?FAMILY COURT/PROBATE COURT ABUSE event with all your friends and after event get together sponsored by Skender Hoti at his family Italian Restaurant,
Little Italy
3116 S Military Trl
Palm Springs, Florida
Call (561) 434-0745

PLEASE RSVP for after event @ skendertravel@gmail.com

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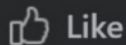
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2



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

3 PROBATE/GUARDIANSHIP DIVISION

4 In Re: The Guardianship Petition on

5 PATRICIA SAHM

6 An Alleged Incapacitated Person/Person in Need of Protection

7 CASE NO.: 2023 MH-1072, 2023 GA-245

8 Judge: Burton, Charles

9
10
11 **REPORT OF MEDICAL EXPERT EXAMINATION**

12 If it please the Court.

13 The undersigned, a Board-Certified Specialist in General Internal Medicine fully licensed
14 to practice Medicine in all its branches in the State of Florida (License ME 81368) with
15 over 50 years of clinical experience and having had further experience as a court-
16 appointed examiner in Martin County, Florida, reports that a comprehensive
17 independent examination has been completed.

18 The undersigned was retained by Counsel, Amber Patwell, Esq. of 136 4th St. N., Ofc.
19 356, St. Petersburg, Fl 33701 to perform, complete and report on a comprehensive
20 incapacity examination on the allegedly incapacitated individual in question, PATRICIA
21 SAHM

22 The examination was performed on June 6, 2023, in my office in Hollywood/Fort
23 Lauderdale, Florida.

24 I possess the credentials, knowledge, skill, experience, and training necessary to testify
25 in this matter.

26 This report is not based on opinion but rather on the application of widely accepted
27 methods and objective findings and facts consistent with Federal Rules of Evidence
28 90.702

29 As part of this examination, I carefully reviewed the reports to the Court from Stanley
30 Bloom, MD and from Steven Cheshire MSW.

31 The report of my comprehensive examination with evaluations, functional assessment
32 and recommendations follows.

1 **IDENTIFYING INFORMATION:** obtained from the allegedly incapacitated person (AIP)
2 and her daughter, Patricia Jr.

3 The AIP provided the following information:

4 Her current address is 21843 Town Place Dr, Boca Raton, Florida 33433

5 Date of Birth: 8/2/41 (81 years of age)

6 Marital status: Widow since 2021.

7 Occupation: Physical Education instructor (master's level)

8 Next of Kin: Patricia Sahm Jr. Cell Phone 561 714 6949

9 **CASE HISTORY:**

10 This case is adversarial to my knowledge.

11 To the knowledge of this examiner, there has been no specific prior incapacity alleged
12 until the death of her husband and a contest over the estate and its assets and
13 incomes.

14 I examined this individual at the request of her Counsel.

15 The comprehensive examination took more than one hour, and preparation of this
16 report took more than one hour. Present at the outset of the appointment were the AIP
17 and her daughter, Patty.

18 Consultation with Primary or Family Physician was not possible because the AIP has
19 not needed care and has not obtained a PCP despite efforts to do so since moving back
20 to Boca Raton.

21 She has an appointment with a neurologist in the future.

22 **Social history:**

23 Information regarding social history was taken to the extent possible from the allegedly
24 incapacitated person. She lives with her daughter part time and otherwise is self-
25 sufficient. She states she can shop, drive to Publix and the bank, bathe and dress
26 herself without assistance. She frequently eats out without difficulty at Kiki's for
27 breakfast or to First Watch restaurant. Her primary meals are breakfast and lunch,
28 usually out. Dinner is light and at home. She often sleeps in a recliner in front of the TV
29 or after reading. She sleeps through the night. She uses no assistive devices and could
30 walk 2-5 miles without difficulty. She has a master's degree Physical Education. She
31 has no physical disability. She plays tennis several times per month without difficulty. In
32 2011 she received 2 new knees without difficulty. She wears glasses only to read. She
33 does not require hearing aids. She has never been a danger to herself or others. She
34 has no history of being neglected, abused, or exploited. She is aware that she has two
35 sources of income, her Social Security monthly check and her teachers' pension

1 monthly check. She has no access to those funds or their amounts or the value of her
2 assets as they have been diverted to her daughter Joanna who does not divulge to her
3 any information about those income streams. It was for these reasons among others
4 that the AIP revoked her advance directives naming Joanna earlier this year.

5

6 **PRIOR DIAGNOSES:** At this time AIP does not have a regular or family doctor with
7 whom I could consult. According to available information, she has a past medical history
8 of lipidemia, anxiety and osteopenia.

9 It is not clear who prescribed these medications or is following the patient.

10 AIP's Current medications include:

11 Amitriptyline 25 mg for anxiety since May 10, 2023 hearing

12 Sertraline 50 mg for stress management

13 Simvastatin 20 mg to lower cholesterol

14 Donepezil 10 mg at bedtime for prevention of progression of mild cognitive impairment

15 Alendronate 70 mg to prevent bone fractures.

16

17 **CAPACITY HISTORY:**

18 This examination was to assess current capacity levels and the need for court
19 intervention and protection. She has never been told she had any capacity issues
20 before the end of 2022. The alleged current clinical memory issues as well as the
21 ongoing dispute between the sisters and its consequences, were likely precipitated by
22 the death of her husband January 5, 2021. Thereafter, her daughter Joanna took control
23 of all aspects of the AIP's finances including her teacher's pension and Social Security
24 payments, all of which bypass the AIP and go directly to Joanna. The AIP must verbally
25 request money every time she needs any. It is then doled out in small subsistence
26 amounts. The AIP has been denied access to any of her funds and has been prevented
27 from knowing how much money she has, where it is located or what it is being used for.
28 The AIP is not aware of the existence or location of any alleged advance directives.

29 Apparently, the petition for guardianship is an outgrowth of a struggle between the two
30 daughters for control of their mother's life and control over their late father's estate and
31 assets. The primary concern for the petitioner Joanna appears to be about money, not
32 the welfare of the AIP, her own mother.

33 There is great animus between the sisters for numerous issues. It even recently
34 reached the point where Patty brandished an unloaded weapon at Joanna.

35

1 **EXAMINATION**

2 I performed a comprehensive Physical Examination on the AIP to obtain an objective
3 cross-sectional description of the patient's mental state which allows for an accurate
4 assessment and formulation, which are required for accurate recommendations to the
5 Court. The encounter occurred over an approximate 1.5 hour period. The encounter
6 including the physical examination took place at my office.

7 Appearance:

8 The patient initially appeared younger than her stated age. She was polite, pleasant and
9 appropriate.

10 Clothing is age appropriate, clean and situationally appropriate.

11 Grooming and personal hygiene were appropriate.

12 Nutrition and hydration appeared adequate.

13 Skin is markedly damaged from years of solar exposure.

14 Attitude:

15 The patient is conversant, not confused, appropriate, respectful and develops rapport
16 without difficulty. She understands the purpose of the examination and is compliant and
17 cooperative.

18 Behavior:

19 There is no evidence of abnormal movements. She makes very good eye contact, has
20 no tremors or tics. Her behavior was appropriate.

21 Mood: Was calm. Communication skills are adequate. Affect is appropriate and
22 rational.

23 Speech: The patient's vocabulary is adequate to communicate. Tone and loudness of
24 voice are normal. Articulation is normal. Sentence structure and linguistics are normal
25 and age appropriate. Speech is fluid.

26 Thought process: The patient's quantity, tempo, form and logical coherence of thought
27 are generally age-appropriate with moments of hesitation.

28 Thought content: There is no evidence of delusions, phobias or preoccupations in the
29 patient's thought content.

30 Perceptions: There is no evidence of hallucinations, pseudo hallucinations or abnormal
31 illusions.

32 Cognition: The patient exhibited normal alertness, full attention and was oriented to
33 date, time, person or place on direct questioning

1 Simple Memory testing showed significant abnormalities in short term memory. Her long
2 -term memory is mostly intact.

3 Comprehensive mental and cognition testing was performed.

4 Executive functions are globally intact.

5 On direct testing, mathematical problem-solving proved difficult. The patient was not
6 able to successfully perform serial sevens past attempt two. Visuospatial functioning
7 was somewhat impaired. Language skills were not impaired. Executive functioning was
8 not compromised.

9 Insight: The patient had insight into her current perilous situation and was able to
10 identify that she wants to avoid any court based interventions into her life. She is well
11 aware that she has long had problems with Joanna and does not get along with and is
12 uncomfortable with her dominating her life.

13 Self Awareness: The patient displays age appropriate self-awareness, planning ability
14 and social cognition. She appears to have or exercise the capacity to make sound,
15 reasoned and responsible decisions even for a person her age.

16 Impact of current Medications: not apparent

17

18 **Physical Exam**

19

20 Physical Examination:

21 Blood pressure/Pulse 110/84 , 76

22 General Appearance: massive solar dermatitis, lean, good posture, well groomed,
23 normally developed female

24 Head-- is normocephalic. Hair is full and silver. No alopecia

25 Ears- there is no cerumen in either tympanic canal. Hearing is normal.

26 Eyes—Arcus senilis is present bilaterally.

27 Nose/ throat-- no abnormalities detected.

28 Dentition is excellent, all her own original teeth are present.

29 Thyroid normal size

30 Lungs; clear to auscultation

31 Heart Sounds;, heart sounds are normal with no murmurs. Rhythm appears to in sinus.

1 Abdomen; without organ enlargement or tenderness to palpation, decreased bowel
2 sounds noted

3 Extremities; Knee replacement scars. No edema noted. Excellent function in all large
4 joints.

5 Pulses palpable symmetrically. No carotid bruits.

6 Neurologic; reflexes symmetrical.

7 Skin: extensive solar damage. One healing ulcer on left Achilles area. An ulcerating
8 squamous cell carcinoma is obvious on her right lower leg.

9
10

11 **PROFESSIONAL MEDICAL DIAGNOSIS:**

12 Age related "Cognitive decline" with some short-term memory loss

13 Good Physical Health for her age

14 Normal cognitive ability for her age

15

16 **FUNCTIONAL ASSESSMENT:**

17 **Threat Assessment:** there is no obvious or apparent external threat to the AIP.
18 AIP does not pose a threat to her own well-being and is functionally capable of
19 determining her own life choices with minimal assistance.

20 The following commonly accepted functional assessments were performed and
21 completed:

22 **Katz index** of independence in activities of daily living:

23 Score 6 out of 6 = Patient is highly independent

24 **Instrumental activities of daily living scale**

25 Score 7 of possible 8 = Patient is capable of almost all ADL's

26 **Montréal cognitive assessment**

27 Score- 20 of possible 30 = mild to moderate impairment in cognition

28 **Abbreviated mental test score.**

29 Score 7 out of possible 9= no evidence of significant dementia

30 **Clock drawing--** scored 3/5 points indicated mild cognitive impairment.

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Discussion:

The mild memory and cognition impairment issues of this very healthy octogenarian patient are age appropriate and are not severe enough to significantly interfere with her safe routine activities of daily living.

Regarding finances, the AIP does not have the opportunity for us to know how adept she might be at handling all her finances, since her daughter Joanna has prevented her from knowing anything about her assets and diverting all her income to herself and forcing her mother to request small transfers of money for her daily needs.

Regarding her math aptitude, she claims she has been terrible at math for her entire life and that has not appreciably changed into her 80's. Nonetheless she was able to perform serial sevens for one round.

There are major problems with the "facts" contained in the prior court ordered evaluations in that, despite the examiners' assertions to the contrary the patient **can and does** regularly drive her 2010 Mercury Mariner SUV without incident, travels alone, shops for herself, eats out regularly, successfully takes her medications, handles simple financial transactions and can effectively use a credit card. For more complicated financial transactions, she has adequate family help available to her. She is aware of the legal dispute between her daughters, and she has the insight to say it makes her so anxious and distraught that she pretends not to know about it.

Furthermore, contrary to Florida statutes, it appears that the three court appointed examiners conducted their examinations simultaneously and, in each other's presence, and openly colluded on their opinions, rendering them **not** independent and therefore improper.

Additionally, retired urologist 86-year-old examiner Stanley Bloom MD, while licensed in New York through 2024 (New York License #099696 since 1967), is not a licensed Florida Physician and therefore cannot practice medicine in this state. He never was in the presence of the AIP for this "examination". He appeared only by Zoom during the time the Cheshires (the other two court appointed non physician examiners who are related) were simultaneously performing their evaluations, which may explain why he and the Cheshires failed perform any physical exam as required by statute. Bloom does not fulfill the statutory criteria to be a Physician examiner and his examination should be disregarded.

To quote from 744.331

The comprehensive examination must include, if indicated:

- 1 **1. A physical examination;**
- 2 **2. A mental health examination; and**
- 3 **3. A functional assessment.**

4 ***If any of these three aspects of the examination is not indicated or cannot be accomplished for any***
5 ***reason, the written report must explain the reasons for its omission.***
6

7 None of the examiner reports gives a credible reason for the absence of a physical
8 examination. In fact, the only examiner even theoretically capable of an examination
9 (Bloom) was not even present in person at the time. The excuse that the result of such
10 an examination would not change the outcome is contemptuous the statute, invalidates
11 the outcome and reveals a bias toward creating rather than preventing guardianship.

12 From the objective and factual evidence, it is not at all evident that removal of any of her
13 rights would benefit or protect this woman at this time. But because of advancing age
14 and normal decline and, of course, the stress of serious family dysfunction, the court
15 may wish to provide a proper and transparent fiduciary over the AIP's finances by way
16 of a temporary limited conservator/independent fiduciary of the estate.

17 Mild cognitive dysfunction in an otherwise healthy and active octogenarian should not
18 be addressed by court ordered removal of any of her God given rights. A guardianship
19 —even a limited one-- would effectively be a life sentence. Rather, the Court is advised
20 of the real dangers of removal of rights in such a situation of family dysfunction and
21 consequent litigation about money, including the predictable court ordered isolation,
22 protracted stressful and very expensive litigation, dissipation of assets, forced, imposed
23 relocation from residence to a facility, high risk of overmedication, and a host of other
24 adverse consequences.

25 This woman's age-appropriate mild impairment does not rise to a level that requires the
26 court to impose the most restrictive solution, draconian guardianship.

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CERTIFICATION

30 I certify that, to the best of my ability, I have examined the alleged incapacitated person
31 in accordance and compliance with the requirements of section 744.331 of the Florida
32 guardianship law, performing the examination and testing necessary to determine
33 which, if any, rights should be removed from the allegedly incapacitated person
34 because she cannot sufficiently or adequately exercise. These conclusions, evaluations
35 and recommendations are hereby presented to the court.

1 I do have knowledge of the type of incapacity alleged in the petition to determine
2 incapacity.

3

4 executed this Sixth Day of June 2023

5

6

7 Electronic Signature

8 Sam J. Sugar MD, FACP

9 typed or printed name

10 Respectfully submitted.

11

12 Sam J Sugar MD FACP

13 Hollywood, Florida

14 ssugarmd@msn.com

15 Florida Medical License ME 81368

16

KITROSER LEWIS & MIGHDOLL

Mitchell I. Kitroser, Esquire, Managing Partner - Admitted in FL, NY & CO • Kathryn N. Lewis, Esquire, Partner - Admitted in Florida
Preston Mighdoll, Esquire, Partner - Admitted in Florida • Clara Crabtree Ciadella, Esquire, Associate Attorney - Admitted in Florida

August 1, 2023

Via E-mail and Certified US Mail

Amber Patwell, Esq.
Witbeck Bennett
136 4th St. N., Ofc. 356
St. Petesburg, FL 33701
apatwell@wblaws.com

RE: Patricia A. Sahn


Dear Ms. Patwell:

As you know, I am the attorney for Charlie Revard, the Court appointed guardian for Patricia A. Sahn. My client has decided to proceed with the foreclosure litigation against the Bernstein Family Trust. Because you participated in the settlement negotiations that we will be seeking to set aside, it is inconceivable that you can continue to represent Patricia A. Sahn going forward. Accordingly, my client has authorized me to let you know that your representation of Patricia A. Sahn is terminated, effective immediately.

Kindly forward a copy of your retainer agreement along with unredacted time sheets to my office for review as soon as is practicable. After reviewing your records, I will let you know if there are any entries that will be disputed or if your invoice can be paid in full.

Thank you in advance for your anticipated cooperation.

Sincerely,



Mitchell I. Kitroser, Esq.

Cc: Charlie Revard