

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,
_____ /

**MOTION TO STRIKE ELIOT BERNSTEIN'S FILINGS AND TO BAR ELIOT
BERNSTEIN FROM OBJECTING TO ESTATE ADMINISTRATION**

Trustee, Ted. S. Bernstein ("Trustee") as sole residuary beneficiary of the Estate, files his Motion to Strike Eliot Bernstein's Filings and to Bar Eliot Bernstein from Objecting to Estate Administration.

Introduction and Factual Background

The Estate of Simon L. Bernstein (the "Estate") has been opened and litigated since 2012. It has taken over seven years to administer the Estate solely because Eliot Bernstein ("Eliot"), who is Decedent's son, has no interest in seeing his parents' trust and estates administered in an economic and efficient process to maximize the distribution to the beneficiaries.

Instead of allowing his own children to receive an inheritance from their grandfather, Eliot is on an never-ending crusade against his incorrect belief of injustice and corruption among judges, lawyers, fiduciaries, and others, including the Florida Supreme Court and the Florida Bar. Eliot has stated that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. Eliot again exemplified his agenda in the May 21, 2019 filing entitled "*SilverBullet Cross Motion for Valid Decision, Order and Judgment*

Granting Mandatory Restitution for Discretionary Destitution Caused by All Void DOJ's" (the "Eliot Motion").

While it is difficult to decipher what Eliot seeks in the Eliot Motion,¹ it appears it was filed to object to Successor Personal Representative's Petition for Fees and Costs of Attorney for Successor Personal Representative (the "Fee Petition"). However, Eliot lacks standing to object to the Fee Petition. He is no longer considered an "interested person" in the Estate. After a trial on December 15, 2015, this Court determined that Eliot is a very limited specific devisee. Furthermore, Eliot has already received all of the property devised to him, leaving him with no further interest in the Estate.

The day after the December 15 trial, this Court entered final judgment ruling that the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will") was "genuine and authentic, and [is] valid and enforceable according to [its] terms." A copy of the December 16, 2015 Final Judgment is attached as Exhibit "A."

Simon's Will provided that Eliot, as a child of Simon, was entitled to Simon's "personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash." These personal effects were to be divided among Simon's children as they agree, and if they could not agree, the Personal Representative was to divide Simon's personal property in as nearly equal shares as practicable. The residue of Simon's

¹ The "WHEREFORE" clause states "may it please Hon Court to please take judicial notice of the foregoing facts of life and pass its legally valid and enforceable Valid DOJ required by laws correctly applied granting this SilverBullet Cross Motion to resurrect Justice and to end still ongoing Justicide but for which due process of law will not end with no time limit, period, case closed?"

Estate was to go into the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (the "Simon Trust").

The December 16, 2015 Final Judgment also determined that the Simon Trust was "genuine and authentic, and [is] valid and enforceable according to [its] terms." The Simon Trust stated that, "for all purposes of this trust and the dispositions made hereunder, my children, ... ELIOT BERNSTEIN ... shall be deemed to have predeceased me as I have adequately provided for them during my lifetime." As a result, the beneficiaries of the Simon Trust were Simon's grandchildren. This included Eliot's children. The December 16, 2015 Final Judgment made clear that Eliot was only entitled to Simon's tangible personal property and was not a beneficiary under the Simon Trust.

Furthermore, the Simon Trust provided that Eliot was to be the trustee of the family trust created for Eliot's children. However, this Court appointed a Guardian ad Litem solely to protect the interests of Eliot's children as a result of Eliot's conduct in the Shirley Bernstein² Trust proceedings (the "Guardian ad Litem Order")³. A copy of the Guardian ad Litem Order is attached as Exhibit "B." The Guardian ad Litem Order stated:

... Based upon the evidence presented and this Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is apparent Eliot Bernstein is not an adequate representative of the best interests of his children. **In fact, his actions are adverse and destructive to the children's interests.**

² Shirley Bernstein is the deceased wife of Simon Bernstein, and mother of Eliot.

³ *Ted Bernstein v. Alexandra Bernstein, et. al*, Case No. 502014CP003698, Palm Beach County, Florida D.E. 161.

Despite this Court making clear that Eliot is a very limited specific devisee and not capable of looking after his own children's interests, Eliot has been nothing but a thorn in the side of the administration of the Estate and all other related legal proceedings. He has delayed the closing of the Estate. He has costed the Estate and his family a significant amount of money in attorneys' fees and other costs.

Eliot has received the full distribution that this Court determined he is entitled to after a full day trial. Therefore, Eliot is no longer an Interested Person, as defined by Section 731.201, Fla. Stat. Eliot lacks standing to object to the Fee Petition. Furthermore, this Court should exclude and strike any future objections to the administration of the Estate, or require that the pleading is signed by a Florida licensed attorney. As explained below, this Court has excluded Eliot in other related matters. The Fourth District also requires any pleading from Eliot to be signed by a member of the Florida Bar.

Argument

To object to the Fee Petition, Eliot must have standing, either because he is a beneficiary or because he is representing his children's interest. To have standing, Eliot must be an "Interested Person." Section 731.201 (23), Fla. Stat. defines an Interested Person as:

any person who may be reasonably be expected to be affected by the outcome of the particular proceeding involved. ***The term does not include a beneficiary who has received complete distribution.***

Eliot is not affected by the Fee Petition or any further pleadings. Eliot has received everything this Court determined he was entitled to from the Estate. He is entitled to nothing more. Additionally, as a result of the Guardian ad Litem Order, Eliot cannot represent his children because "his actions are adverse and destructive to the children's interests."

Every time Eliot files a pleading, it wastes the Estate's resources, the Court's time, and delays the beneficiaries from receiving their distribution. Eliot abuses the court system by continuing to file objections and pleadings interfering with the administration of the Estate. Therefore, Trustee requests that this Court order enter an order striking each of Eliot's future pleadings or require any pleadings filed by Eliot be signed by a licensed Florida attorney.

This Court has the authority to restrain Eliot, a *pro se* litigant, and let the administration continue uninterrupted by him. "When a *pro se* litigant files frivolous ... pleadings in a lawsuit, the court has the authority to restrain such a litigant from abusing the legal system and prevent him from abusing, annoying, or harassing those against whom such suits or pleadings have been filed." *Balch v. HSBC Bank, USA, N.A.*, 128 So. 3d 179, 181 (Fla. 5th DCA 2013). There is no doubt that Eliot's conduct over the past seven years has abused the legal system and harassed Trustee and the rest of his family. The Eliot Motion is nonsensical and seeks to interfere with the efficient administration of the Estate. Eliot does not want to see the resolution of the Estate and distributions to his children. His actions should be stopped.

This Court has previously used this authority to bar Eliot from participating in the litigation surrounding his mother's trust. Paragraph 7 of the Guardian ad Litem Order (Ex. B) stated:

To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims or other filings by Eliot Bernstein on behalf of his children are hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

Additionally, 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 "C." 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.*"

To protect the Estate's and the Trust's (as sole residuary beneficiary) remaining assets and to avoid wasting this Court's time, Trustee requests that this Court adopt what this Court did in the Guardian ad Litem Order, and bar Eliot from further participating in the Estate proceedings. Alternatively, this Court adopt the Fourth's ruling in the Sanction Order mandating that any of Eliot's claims be signed by a member in good standing of the Florida Bar certifying that a good faith basis exists for Eliot's pleadings.

WHEREFORE, Trustee requests that this Court strike the Eliot Motion, filed May 21, 2019, bar Eliot from any further pleadings in the Estate, and any other relief this Court deems appropriate.

CERTIFICATE OF SERVICE

I CERTIFY that on this 14th day of June, 2019, I electronically filed the foregoing document with the Clerk of the Court via the Florida Courts eFiling Portal, which will serve the same via email transmission on all counsel on the attached Service List.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone
(561) 655-5537 Facsimile
email: arose@mrachek-law.com;
manderson@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
ALAN B. ROSE
Florida Bar No. 961825

SERVICE LIST - CASE NO. 502012CP004391XXXXNBIH

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
(561) 241-2330 - Facsimile
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Diana Lewis, Esq.
ADA & Mediations Services, LLC
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 - Telephone
Email: dzlewis@aol.com
Guardian *Ad Litem* for
Eliot Bernstein's minor children,
Jo.B., Ja.B., and D.B.

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ashley Crispin Ackal, Esq.
O'Connell & Crispin Ackal, PLLC
420 Royal Palm Way, Suite 300
Palm Beach, FL 33480
561-355-0403 - Telephone
561-355-5133 - Facsimile
Email: service@OCAlawyers.com;
secondaryservice@OCAlawyers.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com
mchandler@mrachek-law.com
Counsel for Ted S. Bernstein

Brett C. Barner, Esq.
Barner & Barner, P. A.
Mirasol Town Square
11360 Jog Road, Suite 104
Palm Beach Gardens, FL 33418
(561) 296-7771 Telephone
(561) 296-7773 Facsimile
Email: bbarner@barnerlaw.com
bhenry@barnerlaw.com
service@barnerlaw.com
Counsel for Ciklin Lubitz

Paul D. Turner, Esq.
Perlman, Bajandas, Yvevoli & Albright, P. L.
200 South Andrews Ave., Suite 600
Ft. Lauderdale, FL 33301
(954) 566-7117 - Telephone
(954) 566-7115 - Facsimile
Email: pturner@pbyalaw.com
eserviceftl@pbyalaw.com
and
Marc Soss, Esq.
11010 Hyacinth Place
Lakewood Ranch, FL 34202-4158
(941) 928-0310 - Telephone
(813) 342-7967 - Facsimile
Email: mjs@fl-estateplanning.com

Miguel Armenteros, Esq.
Lilian Rodriguez-Baz, Esq.
Perlman, Bajandas, Yevoli & Albright, P. L.
283 Catalonia Avenue, Suite 200
Coral Gables, FL 33134
(305) 377-0086 - Telephone
(305) 377-0781 - Facsimile
Email: miguel@pbyalaw.com
lrodriguez@pbyalaw.com
eservicemia@pbyalaw.com

Counsel for Joshua Bernstein

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

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

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

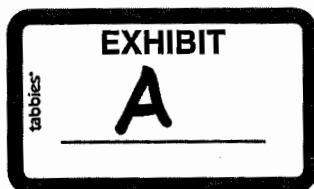
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and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

Defendants.

COPY

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,



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having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~ *and EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Plus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

The evidence shows

ELIOT BERNSTEIN

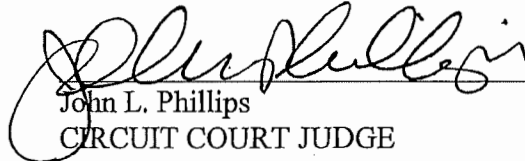
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6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.


John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
john@jmorrisseylaw.com
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

**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.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:



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1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ ^{The} Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. JRP

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued ^{to} advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990) (best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." ¹ Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse + destructive to the child's interest} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB}

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ~~upon notice from the Trustee's counsel the Court shall randomly~~

each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to accept the appointment if selected. These lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) ~~shall make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian, and all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

proposed
* Parties shall furnish a ~~Order appointing GAT~~ with the lists. The Court will act without further hearing on the appointment, if possible.

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
ifoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

August 23, 2017

CASE NO.: 4D17-1932

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

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

Served:

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

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

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

ka



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

