

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF
THE SIMON BERNSTEIN TRUST, MOTION TO HOLD
ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS,
AND TO COMPEL COMPLIANCE WITH PRIOR ORDERS AND SERVICE RULES**

Movant, Ted S. Bernstein, Successor Trustee of the Simon Bernstein Trust, moves for an order finding Eliot Bernstein in contempt of court for violating the Courts' Order dated July 18, 2014 (Exhibit "A") and for appropriate sanctions; seeks an order compelling him for the second time to appear for deposition (Exhibit "B"); seeks an order overruling his objections to discovery and ordering him to produce responsive documents in his possession; and seeks an order compelling compliance with service rules, and states:

1. Eliot Bernstein, despite this Court's Order dated July 18 (Exhibit "A") has published the privileged materials, directly or indirectly, in a pleading filed in an unrelated case. (See excerpts attached as Exhibit "C".) His continued use and re-publication of the privileged information directly violates this Court's ruling.

2. In addition, Eliot has not complied with ¶9B of the Order dated July 18. To date, Eliot has not: (i) provided proof that he sent notice to everyone to whom Eliot sent a copy of the email; (ii) has not directed those persons to comply with Order, and instead told the people that because he might appeal "I'm not sure what you are supposed to do in the meantime with your copies" (Exhibit "D"); and (iii) has never provided any evidence that email in fact was sent out to

anyone between his receipt of it at 10:52 pm on May 22, 2014 and the hearing held on the morning of May 23, 2014, as Eliot represented on the record (as demonstrated in the transcript excerpt attached as Exhibit "E").

3. Movant seeks an order finding Eliot Bernstein in contempt and awarding appropriate sanctions, which should include striking all of his *pro se* court filings and precluding him from further participation in this case, and an award of attorneys' fees against Eliot Bernstein. Eliot has no individual standing in this matter as he is not named as a beneficiary under Simon's Will or Trust, and it is unclear from his own filings whether he is advancing his own interests or the interests of his minor children, who may be in need of a Guardian ad Litem.

4. Movant also seeks a second order compelling Eliot Bernstein to appear for deposition, as he has been unwilling to agree to a deposition date. (See Exhibit "B"). Eliot has been requested to provide deposition dates and documents (Exhibit "F") and has refused.

5. Movant seeks an order overruling Eliot Bernstein's Objections to discovery and compelling him to produce responsive documents within 10 days.

6. Finally, Movant seeks an order directing Eliot Bernstein to comply with Fla. R. Civ. P. Rule 1.080(a) and Fla. R. Jud. Admin. 2.516(b). Under these Rules, pleadings are to be served on the attorneys via the email addresses the attorneys designate. In violation of these Rules, Eliot has taken been serving court filings and other materials directly to numerous persons beyond the rules, including frequently every member of the undersigned's law firm (secretaries, receptionists, paralegals, staff members, associates and shareholders). Also, Eliot emails many things to Brian O'Connell, which could increase the litigation expense to this Estate. Only matters relating the Estate should be forwarded to Mr. O'Connell. Finally, Eliot emails and serves many things to third

parties, including an internet blogger. There are many pieces of confidential information in this case, including financial information and information about a number of innocent grandchildren, five of whom are minors. Movant seeks an order restricting Eliot from serving any papers relating to these trusts and estate matters to anyone other than (i) the designated email address of the lawyers who have appeared and (ii) any legal counsel representing him in the matter or considering representing him in the matter. His current practice is improper and should be stopped to protect the parties and to reduce the litigation expenses.

WHEREFORE, Movant requests that this Court enter an order: (i) finding Eliot Bernstein in contempt of court for violating the Court's Order dated July 18, 2014, and enter appropriate sanctions; (ii) compelling him for the second time to appear for deposition (Exhibit "B"); (iii) overruling his objections to discovery and compelling him to produce responsive documents in his possession within 10 days; and (iv) directing him to fully comply with Fla. R. Civ. P. Rule 1.080(a) and Fla. R. Jud. Admin. 2.516(b) and to serve only his counsel and the attorneys at their designated email service addresses.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 6th day of August, 2014.

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By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

– and –

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EXHIBIT

"A"

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

ORDER ON TED S. BERNSTEIN'S, AS SUCCESSOR TRUSTEE OF THE
SIMON L. BERNSTEIN TRUST, MOTION TO COMPEL
ELIOT BERNSTEIN TO COMPLY WITH RULE 1.285

THIS CAUSE having come before the Court for evidentiary on July 11, 2014, upon Ted S. Bernstein's, as Successor Trustee of the Simon L. Bernstein Trust, Motion To Compel Eliot Bernstein to Comply with Rule 1.285 ("The Motion"), and after being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that

1. Ted S. Bernstein ("Ted") sent an email to Eliot Bernstein ("Eliot") and later claimed that the email was an inadvertent disclosure of privileged materials, invoking the procedures under Florida Rule of Civil Procedure 1.285. Eliot contested the assertion of the privilege, and this Court held an evidentiary hearing on July 11, 2014. Based upon the evidence presented at the evidentiary hearing, the Court makes the following findings of fact and conclusions of law.

2. Ted wrote an email (Eliot's Exhibit 1 for ID only) and actually sent the email to Eliot. The email was sent by Ted to Eliot at 10:12 pm on May 22, 2014.

3. Ted advised his counsel at 10:57 p.m. that the email was sent to Eliot by mistake. Ted's counsel then advised Eliot by email at 11:07 p.m. on May 22, 2014, stating:

You received an email from Ted intended solely for me, and accidentally sent to you by mistake.

RECEIVED JUL 24 2014

The email was sent around 10:12 pm tonight

Please delete the email immediately without reading it and confirm that deletion by email. The communication was attorney-client protected and you are not entitled to read or possess the email due to the accidental transmission.

Thank you in advance, and if you fail to comply with this request we will be forced to take corrective action with the Court.

4. The Court finds that by Ted's counsel so notifying Eliot, Ted invoked the procedures of Rule 1.285. Therefore, under subpart (b), Eliot as the party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed.

5. Eliot also challenged the assertion of privilege, claiming that the email was not privileged under section 90.502(4)(a) and (c). That assertion necessitated the evidentiary hearing.

6. The Court finds that Ted did not intend that email to go Eliot, but instead, meant it to go to his lawyer. Indeed, having read the email the Court finds that it is pretty easy to see that the letter was intended to go to Ted's lawyer because (i) in the beginning of the email it says the lawyer's first name, and (ii) the discussion in the letter is clearly directed to that which is part of the subject of the letter, which is this case. Thus, the Court makes a finding of fact that this letter was intended to go to Ted's counsel.

7. The Court also rejects Eliot's argument that the email was not privileged because of Florida Statute 90.502(4)(c), but that subsection does not apply. Likewise, the Court finds that the

crime-fraud exception in 90.504(4)(a) also does not apply. Any language suggesting that Ted wanted his counsel to be aggressive and forceful is not evidence of Ted committing or planning to commit what Ted knew was a crime or fraud. The Court rejects Eliot's assertion that Ted was threatening Eliot with some force or bodily harm, or the like. Having read the email, it is clearly not the case that Ted was threatening Eliot physically, like beating him up.

8. Having determined that the lawyer-client privilege does apply and this email was not requesting perpetration of a crime of assault or battery against Eliot, the next question then becomes whether there remains grounds to challenge the assertion of privilege. The court find that there is not.

9. In light of this Court's finding, the Court orders the following as a remedy:

A. Eliot delete all copies of the email in Eliot's possession or control, including any electronic copies.

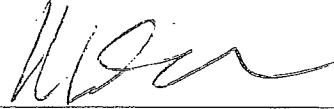
B. Eliot shall give prompt notice to every recipient – everybody to whom Eliot sent a copy of the email – of this ruling by sending each such person a copy of this Order and direct that they shall also delete and not transmit. Eliot shall file a proof of compliance with this Court, including a copy of his transmittal letter to each recipient.

C. Eliot shall not, from the time of the Court's oral ruling, forward the email to anybody. If Eliot violates this Order, the Court ^{MAT (Wtc)} ~~will~~ hold him in contempt of court and consider appropriate remedy for such violation.

10. If Eliot appeals this Order, he must obey and follow this Order pending the appeal.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 18 day of July,

2014.



Martin H. Colin
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

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EXHIBIT
"B"

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____/

**ORDER ON TED S. BERNSTEIN'S, AS SUCCESSOR TRUSTEE OF THE SIMON L.
BERNSTEIN TRUST, MOTION TO COMPEL ELIOT BERNSTEIN TO COMPLY
WITH DISCOVERY REQUESTS AND TO COMPLY WITH RULE 1.285**

THIS CAUSE having come before the Court on June 11, 2014, upon Ted S. Bernstein's, as Successor Trustee of the Simon L. Bernstein Trust, Motion To Compel Eliot Bernstein to Comply with Discovery Requests and to Comply with Rule 1.285 ("The Motion"), and after being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that

1. The Motion is granted in part and deferred in part.
2. Eliot Bernstein shall appear for deposition at a mutually agreeable date and time, prior to the hearing on Eliot's pending motions/petitions.
3. As to the privilege issue raised under Rule 1.285, the matter shall be set for an evidentiary hearing.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, _____ day of June,
2014.

SIGNED & DATED

JUN 19 2014

**MARTIN H. COLIN
CIRCUIT JUDGE**

Martin H. Colin
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

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EXHIBIT
"C"

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

CASE NO. 502014CP002815XXXXSB

ELIOT AND CANDICE BERNSTEIN,

IN THEIR CAPACITY AS PARENTS AND
NATURAL GUARDIANS OF JOSHUA,
JAKE AND DANIEL BERNSTEIN, MINORS,
JURY TRIAL REQUESTED

HON. JEFFREY DANA GILLEN
TRANSFERRED TO
HON. MARTIN COLIN

Plaintiffs,

v.

OPPENHEIMER & CO. INC. AND ITS CURRENT AND FORMER DIVISIONS,
AFFILIATES, SUBSIDIARIES, STOCKHOLDERS, PARENTS, PREDECESSORS,
SUCCESSORS, ASSIGNORS, ASSIGNS, PARTNERS, MEMBERS, OFFICERS,
DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, ADMINISTRATORS,
REPRESENTATIVES, ATTORNEYS, INSURERS AND FIDUCIARIES;
OPPENHEIMER TRUST COMPANY OF DELAWARE AND ITS CURRENT AND FORMER
DIVISIONS, AFFILIATES, SUBSIDIARIES, STOCKHOLDERS, PARENTS,
PREDECESSORS, SUCCESSORS, ASSIGNORS, ASSIGNS, PARTNERS, MEMBERS,
OFFICERS, DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, ADMINISTRATORS,
REPRESENTATIVES, ATTORNEYS, INSURERS AND FIDUCIARIES;
LEGACY BANK OF FLORIDA AND ITS CURRENT AND FORMER DIVISIONS,
AFFILIATES, SUBSIDIARIES, STOCKHOLDERS, PARENTS, PREDECESSORS,
SUCCESSORS, ASSIGNORS, ASSIGNS, PARTNERS, MEMBERS, OFFICERS,
DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, ADMINISTRATORS,
REPRESENTATIVES, ATTORNEYS, INSURERS AND FIDUCIARIES;
STANFORD FINANCIAL GROUP AND ITS CURRENT AND FORMER DIVISIONS,
AFFILIATES, SUBSIDIARIES, STOCKHOLDERS, PARENTS, PREDECESSORS,
SUCCESSORS, ASSIGNORS, ASSIGNS, PARTNERS, MEMBERS, OFFICERS,
DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, ADMINISTRATORS,
REPRESENTATIVES, ATTORNEYS, INSURERS AND FIDUCIARIES;
JP MORGAN CHASE & CO. AND ITS CURRENT AND FORMER DIVISIONS,
AFFILIATES, SUBSIDIARIES, STOCKHOLDERS, PARENTS, PREDECESSORS,
SUCCESSORS, ASSIGNORS, ASSIGNS, PARTNERS, MEMBERS, OFFICERS,
DIRECTORS, TRUSTEES, EMPLOYEES, AGENTS, ADMINISTRATORS,
REPRESENTATIVES, ATTORNEYS, INSURERS AND FIDUCIARIES;
JANET CRAIG, INDIVIDUALLY;
JANET CRAIG, PROFESSIONALLY;
HUNT WORTH, INDIVIDUALLY;

231. That Craig claimed that she was the Successor Trustee to Stanford Bank as Trustee of the children's school trust funds. The transfer of funds allegedly occurred when the infamous Sir Robert Allen Stanford was arrested for the second biggest Ponzi scheme in the United States and the banks he owned and operated were seized by US federal authorities and the monies had to be transferred to a new financial institution.
232. That it is alleged that large amounts of monies were lost in the transfers but again financial information regarding these transfers is limited due to suppression, denial and destruction of documents.
233. That several of the account executives working the Bernstein family investment accounts at Stanford, including those handling the children's trusts, transferred from the now infamous Sir Robert Allen Stanford banks to Oppenheimer, then to JP Morgan or vice versa, as the records provided thus far are incomplete and unclear regarding the personal transfers.
234. That on information and belief, Simon Bernstein immediately prior to his sudden and unexpected death, where it has been alleged by Theodore Bernstein and others that he may have been murdered, was contacting JP Morgan and Oppenheimer regarding missing funds in the transfer of his accounts and his family's accounts from Stanford to Oppenheimer then to JP Morgan or vice versa, including but not limited to, trust funds of Eliot's three minor children.
235. That this Court in the Probate cases has recently sealed a document as "Attorney Client Privileged" that Eliot is precluded from publishing or distributing but can be found online at a number of sources due to its widespread distribution by Eliot prior to his knowledge that claims of Privilege were levied in attempts to cover up the document that both threatens Eliot with forcefulness and aggressiveness and displays a wide variety of Breaches of Fiduciary Duties by Fiduciaries in the Estates and Trusts, primarily Theodore and violations of Attorney Conduct Codes and more by the Attorneys at Law

mentioned in the letter that was sent by Theodore directly and solely to Eliot, where neither are Attorneys at Law, nor clients of one another. That the letter exhibits further conspiratorial activities.

236. That in keeping with the Court Order, Eliot will not republish the email herein as directed but will direct the Court to available sites where it exists publically and eternally in the World Wide Web, including, <http://www.ripoffreport.com/r/alan-rose-of-mrachek-fitzgerald-rose/west-palm-beach-florida-33401/alan-rose-of-mrachek-fitzgerald-amp-rose-alan-b-rose-suppress-free-speech-cover-up-1149197> and <http://tedbernsteinreport.blogspot.com/2014/07/alan-rose-john-pankauski-and-ted.html> , hereby incorporated by reference in entirety herein.

237. That Hon. Judge Colin claimed in hearings that it was obvious that the language threatening to use force and aggression with Eliot could not have meant to cause him physical harm or bodily injury and Eliot can understand that in normal circumstances lawyers using these terms may not mean harm but more strategy but in this unique case where the lawyers are accused of fraud, forgeries and theft and may face lengthy prison sentences, perhaps that language should be re-read in light of the claims of Murder of Simon, prior Death Threats to Eliot and CAR BOMBINGS and reported to the proper authorities by this Court.

238. This case is related to ALL of the following ongoing actions worldwide involving Eliot Bernstein where there are claims of conspiracy committed by Attorneys at Law in each and where shockingly there are many links in each of the cases to the same Attorneys at Law acting in various combinations in each case, including the instant action;

- i. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK, ELIOT I. BERNSTEIN, et al., Plaintiffs, - against - APPELLATE DIVISION FIRST DEPARTMENT DISCIPLINARY COMMITTEE, et al., Defendants. Case No. 07 Civ. 11196 (SAS), Honorable Judge SHIRA A. SCHEINDLIN, U.S.D.J. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS,

EXHIBIT

"D"

Eliot Ivan Bernstein

From: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Sent: Tuesday, July 22, 2014 5:39 PM
To: Maritza Rivera Puccio (maritza_puccio@yahoo.com)
Subject: FW: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB - OBJECTION TO FINAL ACCOUNTING AND PETITION FOR FORMAL, DETAILED, AUDITED AND FORENSIC ACCOUNTING AND DOCUMENT ANALYSIS
Attachments: 20140718 Order Regarding Privilege.pdf

Hi, in furtherance to my email below regarding a message sent to you regarding an alleged privileged document, after a hearing regarding the matter the Court ordered that it was privileged and that I notice all recipients to not distribute that letter and delete it, please take this email as my compliance with that Order. Attached is a copy of the Order. The alleged privileged email header that was sent to you is in the prior email below. While I know many of you thought this email was not privileged and that it was threatening and contained information that Ted was breaching his fiduciary duties and misusing trust assets to "protect" himself, even against the advice of counsel, bad decisions by Judge's do happen. It appears the judge subjectively determined what the contents meant and determined that a letter from Ted to me was somehow inadvertent disclosure of a privileged document, despite the fact that it was never privileged in the first place since it was never sent by Ted to his counsel, the ruling may be precedent setting and wholly invalidate the meaning of attorney client privileged communications to a subjective term depending on what the judge thinks people's intent are and not the law? Ted's threats to use trust funds to seek my children's school records to use against them and threats to deposition and legally harass anyone who may be helping me were also ignored by the judge. I may appeal so I am not sure what you are supposed to do in the meantime with your copies, please consult counsel.

Thanks, eb

From: Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]
Sent: Friday, May 23, 2014 1:41 PM
To: Maritza Rivera Puccio (maritza_puccio@yahoo.com)
Subject: FW: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB - OBJECTION TO FINAL ACCOUNTING AND PETITION FOR FORMAL, DETAILED, AUDITED AND FORENSIC ACCOUNTING AND DOCUMENT ANALYSIS

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RULE 1.285.

INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

(a)

Assertion of Privilege as to Inadvertently Disclosed Materials.

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within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b)

Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) shall promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice shall also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party shall also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation pursuant to R. Regulating Fla. Bar 4

4.4(b).

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(3) The disclosing party, person, or entity has failed to serve timely notice under this rule.

(4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege. April 17, 2014 Florida Rules of Civil Procedure

57

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From: Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]

Sent: Thursday, May 22, 2014 10:52 PM

To: Eliot Ivan Bernstein

Subject: Re: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB - OBJECTION TO FINAL ACCOUNTING AND PETITION FOR FORMAL, DETAILED, AUDITED AND FORENSIC ACCOUNTING AND DOCUMENT ANALYSIS

Alan - I

df>



Eliot Ivan Bernstein

From: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Sent: Tuesday, July 22, 2014 5:39 PM
To: Crystal L Cox (savvybroker@yahoo.com); Crystal L. Cox @ Liquidating Trustee (Crystal@CrystalCox.com)
Subject: FW: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB - OBJECTION TO FINAL ACCOUNTING AND PETITION FOR FORMAL, DETAILED, AUDITED AND FORENSIC ACCOUNTING AND DOCUMENT ANALYSIS
Attachments: 20140718 Order Regarding Privilege.pdf

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Thanks, eb

From: Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]
Sent: Friday, May 23, 2014 1:41 PM
To: Crystal L Cox (savvybroker@yahoo.com); Crystal L. Cox @ Liquidating Trustee (Crystal@CrystalCox.com)
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Alan - I

df>



Eliot Ivan Bernstein

From: Eliot Ivan Bernstein <iviewit@iviewit.tv>
Sent: Tuesday, July 22, 2014 5:39 PM
To: Walt Sahn (pjpaws@embarqmail.com)
Subject: FW: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB - OBJECTION TO FINAL ACCOUNTING AND PETITION FOR FORMAL, DETAILED, AUDITED AND FORENSIC ACCOUNTING AND DOCUMENT ANALYSIS

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EXHIBIT

"E"

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXSB

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

-----/

PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: MAY 23, 2014

TIME: 9:00 a.m. to 10:00 a.m.

1 there's a rule on objections, the parties
2 object. They don't use you -- you don't work
3 for them.

4 MR. BROWN: Okay.

5 THE COURT: You work for the court.

6 MR. BROWN: I'll try and craft an order
7 that deals with that motion in that regard.

8 Also, there also was a motion, Eliot has
9 concerns about the 2012 will and its validity.
10 I think your ruling would be the same on that.
11 I don't have a role in trying to contest that
12 will --

13 THE COURT: Exactly. You're not an
14 advocate. You don't investigate things that
15 the parties may be interested in. They can do
16 what they think they need to do based on the
17 rules of procedure and statutes.

18 MR. BROWN: That's it.

19 MR. ROSE: If I may address the privilege
20 issue?

21 THE COURT: Okay. The privilege issue,
22 okay.

23 MR. ROSE: May I approach?

24 THE COURT: Yes.

25 MR. ROSE: I can file a copy of this.

1 This is the email in question. Without reading
2 the email, if you look at who it is addressed
3 to at the very top. Mr. Bernstein is saying,
4 this is Ted, telling me he sent it to Eliot by
5 mistake. Last night at 10:12 he got off an
6 airplane and wanted to tell me things. It's to
7 Eliot by accident. If you just read --

8 THE COURT: When you say to Eliot by
9 accident, the only person this is sent to is
10 Eliot.

11 MR. ROSE: Correct. He was trying to send
12 it to me. If you look below the word analysis,
13 the first word of the email is Alan.

14 THE COURT: So this was is supposed to go
15 to you and it went to Eliot?

16 MR. ROSE: By mistake. And Mr. Bernstein
17 has advised me this morning he sent it to 2,000
18 people already. He plans on publicizing it --

19 THE COURT: I'm sure he didn't do that
20 because if he wants to participate in the case
21 he's obligated to have and comply with the
22 rules of court.

23 MR. BERNSTEIN: Your Honor --

24 THE COURT: When you --

25 MR. BERNSTEIN: I was sent an email to me.

1 Like I do when I get a letter that has
2 threatening stuff to me I sent it to my friends
3 who are lawyers. I sent it to a number of
4 people. Actually, I got so busy sending it to
5 people, because it scared me a little bit that
6 it was very threatening to people, that by the
7 time I was done my wife stopped me and said we
8 got to go to court. All I know is my brother
9 sent me an email that seems pretty threatening.
10 It was addressed to me. I was the intended
11 recipient.

12 THE COURT: Let me ask you, when the email
13 starts off Alan --

14 MR. ROSE: I get a million emails --

15 THE COURT: That say Alan?

16 MR. BERNSTEIN: That say whoever's name.

17 THE COURT: Okay. All right. You know
18 what, I don't buy anything you just told me.

19 MR. BERNSTEIN: I thought my brother was
20 sending me a copy of an email --

21 THE COURT: Stop. Stop. Stop speaking.
22 I'm going to look at the rule for a second.

23 MR. BERNSTEIN: Okay.

24 MR. ROSE: It's 1.285.

25 THE COURT: Okay.

1 MR. BERNSTEIN: I haven't been prepared
2 for this, so...

3 THE COURT: Okay.

4 MR. BERNSTEIN: I haven't looked at the
5 rules.

6 THE COURT: Okay.

7 MR. BERNSTEIN: I can show you several
8 instances in my email of people sending me
9 letters addressed to other people, several
10 thousands of those.

11 THE COURT: So, all right. Everyone has
12 to take a deep breath. This situation is done
13 pursuant to Rule 1.285. So Mr. Rose, on your
14 side, correct me if you think I'm wrong,
15 Subsection A says, "When you" -- your client --
16 "takes a position that there's been an
17 inadvertent disclosure of privileged materials
18 to another person" -- which is what you say
19 happened, correct?

20 MR. ROSE: Correct, sir.

21 THE COURT: It says here, "In order to
22 assert the privilege the party, person or
23 entity shall, within 10 days of actually
24 discovering the inadvertent disclosure, serve
25 written notice of the assertion of privilege on

1 the party to whom the materials were disclosed.
2 The notice shall specify with particularity" --
3 etc. And then there's a procedure.

4 MR. ROSE: I did that last night. I
5 emailed him last night.

6 THE COURT: I didn't know that. So you
7 gave him the written notice. I assume he got
8 it. Can I see a copy of the notice?

9 MR. ROSE: I'm trying to get a copy of the
10 notice. Perhaps -- I'm not trying to have the
11 whole argument heard today. I just --

12 THE COURT: The rule applies.

13 MR. ROSE: Right.

14 THE COURT: So once he gets notice, the
15 rule applies. So the notice will have -- you
16 sent it by email?

17 MR. ROSE: I have it here now. I do find
18 it, sir. May I approach?

19 THE COURT: What's the time and date of
20 the notice?

21 MR. ROSE: May 22, 2014 at 11:07 p.m. I
22 said, "You received an email from Ted intended
23 solely for me, and accidentally sent to you by
24 mistake. The email was sent around 10:12 p.m.
25 tonight. Please delete the email immediately

1 without reading it and confirm that deletion by
2 email. The communication was attorney-client
3 protected and you are not entitled to read or
4 possess the email due to the accidental
5 transmission. Thank you in advance. And if
6 you fail to comply with this request we'll be
7 forced to take corrective action with the
8 court." Signed by me sent to the same email
9 address that --

10 THE COURT: Okay. All right. So the rule
11 says, to Eliot, he sent that to you, Rule
12 1.285, Subsection B tells you what you're
13 supposed to do.

14 MR. BERNSTEIN: I haven't seen it yet.

15 THE COURT: Okay.

16 MR. BERNSTEIN: He's saying he sent it
17 after Ted's email. The last email I read was
18 Ted's email. So I haven't seen it.

19 THE COURT: So open that email --

20 MR. BERNSTEIN: Okay.

21 THE COURT: Okay. And do what the rule
22 says.

23 MR. BERNSTEIN: Don't send it to anybody
24 else.

25 THE COURT: Well, okay, that, but it also

1 says some other things of what you're supposed
2 to do. You're supposed to return or destroy
3 it. That's one thing you're supposed to do.
4 And you are to notify anyone else who you
5 disclosed it to that they're to do the same
6 thing and you're also to take reasonable steps
7 to retrieve the materials disclosed --

8 MR. BERNSTEIN: I'll do all that.

9 THE COURT: And the only exception to this
10 is if you want to challenge that assertion that
11 you were provided an inadvertent privileged
12 matter. And then the rule says what could
13 happen and we can have litigation and spend a
14 lot of money.

15 MR. BERNSTEIN: No. I'll do whatever it
16 is -- whatever the law says, as always.

17 THE COURT: There's nothing for me to do.

18 MR. ROSE: I understand. I just want to
19 make sure you --

20 MR. BERNSTEIN: Your Honor, it went out to
21 a lot of people. Like I said, I have a broad
22 base --

23 THE COURT: Take a look. When you leave
24 the courthouse --

25 MR. BERNSTEIN: Okay. I'll notify

1 everybody though.

2 THE COURT: Go and take a look at the rule
3 and just do what the rule says.

4 MR. ROSE: And it's not to be posted on
5 social media.

6 THE COURT: You see, I'm not allowed to
7 have dialogue on that now. Other than signing
8 the order, hearing over. Thank you.

9 (Whereupon the hearing is concluded at 10:00 a.m.)

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EXHIBIT

"F"

Alan Rose

From: Alan Rose
Sent: Monday, August 04, 2014 3:25 PM
To: 'Eliot Ivan Bernstein'
Subject: RE: SERVICE OF COURT DOCUMENT - CASE NUMBER 502012CP004391XXXXSB

A few things, please respond to each numbered point:

1. Will you agree to stop sending things to every employee of my law firm. Under the Rules, we designate who is to be copied on service emails. I ask that you send regular communication only to me and e-service only to those designated by us. Please advise and if needed we will seek a court order.
2. As to your Proof, you have never provided to us the emails which you claim you sent out on the evening of May 22, 2014; the only things you have sent are emails the following afternoon and again in July. We request that you provide copies of all emails, particularly any emails you actually sent from 10:52 pm on May 22 through the start of the hearing on May 23rd.
3. Again, as to the Proof, I do not believe you have complied with the Court's ruling, even as to the ones you sent, because you did not request that these people return or delete the privileged email. That was what you were required to do.
4. I believe you have violated the Court's order by your filing in the Oppenheimer case. In your filing, you refer to the privileged email and advise people where to find the privileged email, which is a violation of the July 18th Order. To the extent that you can correct that violation, we ask you to do so, and further demand that you cease further violating the Order.
5. You claim to have documents relating to an investigation into Simon's assets (does this include Shirley's as well?), yet you refuse to provide these documents and refuse to appear for deposition. We need documents and testimony as to:
 - A. Iviewit – although everyone thinks and is pretty sure is worthless, we have asked for documents relating to any shares Simon may have owned. Again, even though we know the shares are worthless, we still are entitled to discovery.
 - B. Any other assets: we have the right to discovery as to anything you actually know or discovered as to Simon's and Shirley's assets.
 - C. We also have the right to ask you about your knowledge of facts. For example, as to estate planning issues, we have the right to ask you about your actual knowledge of the estate plan and the estate planning documents; the authenticity of signatures and any knowledge or claims you have as to any and all documents; knowledge of alleged fraud the role of various alleged participants; the damages, if any, caused; etc. We need to schedule your deposition asap, as it was ordered to be taken a long time ago.

Thanks, and I look forward to your reply.

Alan B. Rose, Esq.
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561.355.6991



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Sent: Monday, August 04, 2014 10:09 AM

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