

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,

\_\_\_\_\_ /

**TED S. BERNSTEIN, SUCCESSOR TRUSTEE'S  
MOTION TO MODIFY ORDER DATED JULY 18, 2014**

Ted S. Bernstein, Successor Trustee of the Simon L. Bernstein Trust, moves to modify the Order dated July 18, 2014, and states:

1. In the Order dated July 18, 2014, which was not appealed, the Court determined that a certain e-mail inadvertently provided to Eliot Bernstein was privileged, then entered certain remedies to protect against the disclosure of the privileged information.

2. The Court has ruled that the prior Order does not, on its face, prevent Eliot Bernstein from publishing the contents of the e-mail or from otherwise referring to, using or mentioning the substance of the privileged communication. If Eliot Bernstein was a member of the bar, he would have been duty bound to notify the Trustee's counsel and certainly not be able to refer to, mention, republish or make any use whatsoever of the privileged information. The Florida Bar Comm. on Professional Ethics, Op. 93-3 (Feb. 1, 1994); *accord* ABA Comm. on Ethics and Professional Responsibility, Formal Op. 92-368 (1992); *Abamar Housing & Dev., Inc. v. Lisa Daly Lady Decor, Inc.*, 698 So.2d 276 (Fla. 3d DCA), *rev. denied*, 704 So.2d 520 (Fla.1997).

3. Moreover, upon the determination that there had been an inadvertent disclosure, in addition to ordering the recipient to return the documents, the Court generally strikes the use of the documents for any purpose and enters an order barring the recipient "from any further use of, reference to, or reliance on, the privileged information." *TheStreet.com v. Carroll*, 20 So. 3d 947 (Fla. 4th DCA 2009). Moreover, a lawyer may be disqualified if he or she they continues to use the information or take an unfair, "informational" advantage over its adversary in the process. *Gen. Accident Ins. Co. v. Borg-Warner Acceptance Corp.*, 483 So.2d 505 (Fla. 4th DCA 1986).

4. Because the Court has determined that, as to the *pro se* participant Eliot Bernstein, there may be a deficiency in the specific instructions given and the scope of the prior Order, the Trustee moves to modify the Order to provide that "Eliot Bernstein shall not use, refer to or rely on the privileged information; shall not direct people to or disclose websites or hyperlinks to the information; nor otherwise mention, quote from, paraphrase, republish, incorporate, or make any use of the facts, information or statements contained in the privileged e-mail."

WHEREFORE, the Trustee requests that the Court modify the prior Order as noted above.

**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 \_\_\_th day of September, 2014.

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](mailto:arose@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

## SERVICE LIST

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) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: [wglasko@palmettobaylaw.com](mailto:wglasko@palmettobaylaw.com);  
Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Benjamin P. Brown, Esq.  
Matwiczuk & Brown, LLP  
625 North Flagler Drive, Suite 401  
West Palm Beach, FL 33401  
(561) 651-4004 - Telephone  
(561) 651-4003 - Facsimile  
Email: [attorneys@matbrolaw.com](mailto:attorneys@matbrolaw.com)

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](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

Irwin J. Block, Esq.  
700 South Federal Highway, Suite 200  
Boca Raton, FL 33432  
(561) 910-3071 - Telephone  
(561) 910-3080 - Facsimile  
Email: [ijb@ijblegal.com](mailto:ijb@ijblegal.com)  
Counsel for Tescher & Spallina

Robert Spallina, Esq.  
Donald Tescher, Esq.  
Tescher & Spallina  
Wells Fargo Plaza  
925 South Federal Hwy  
Suite 500  
Boca Raton, Florida 33432

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](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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IN RE:

ESTATE OF SIMON L. BERNSTEIN,

---

**ORDER ON MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE  
OF THE SIMON BERNSTEIN TRUST,  
MOTION TO MODIFY ORDER DATED JULY 18, 2014**

THIS CAUSE having come before the Court upon Movant's, Ted S. Bernstein, as Successor Trustee of the Simon Bernstein Trust, Motion to Modify the Order Dated July 18, 2014 (the "Motion"). The Court, having heard argument and being fully advised in the premises, it is hereby, ORDERED AND ADJUDGED that

1. The Court has determined that the July 18th Order was not clear or specific enough to prevent Eliot Bernstein from publishing the privileged material.
2. To avoid any confusion or doubt as to the future use of the privileged information, the July 18th Order is modified such that "Eliot Bernstein shall not use, refer to or rely on the privileged information; shall not direct people to or disclose websites or hyperlinks to the information; nor otherwise mention, quote from, paraphrase, republish, incorporate, or make any use of the facts, information or statements contained in the privileged e-mail."

3. In all other respects, the July 18th Order remains in full force and effect.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this \_\_\_\_ day of  
September, 2014.

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Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

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: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](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: [wglasko@palmettobaylaw.com](mailto:wglasko@palmettobaylaw.com);  
Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Benjamin P. Brown, Esq.  
Matwiczuk & Brown, LLP  
625 North Flagler Drive, Suite 401  
West Palm Beach, FL 33401  
(561) 651-4004 - Telephone  
(561) 651-4003 - Facsimile  
Email: [attorneys@matbrolaw.com](mailto:attorneys@matbrolaw.com)

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](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

Irwin J. Block, Esq.  
700 South Federal Highway, Suite 200  
Boca Raton, FL 33432  
(561) 910-3071 - Telephone  
(561) 910-3080 - Facsimile  
Email: [ijb@ijblegal.com](mailto:ijb@ijblegal.com)  
Counsel for Tescher & Spallina

Robert Spallina, Esq.  
Donald Tescher, Esq.  
Tescher & Spallina  
Wells Fargo Plaza  
925 South Federal Hwy  
Suite 500  
Boca Raton, Florida 33432

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](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)