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

CASE NO. 502011CP000653XXXXSP

IN RE: ESTATE OF SHIRLEY BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN,
Petitioner,

V.

TESCHER & SPALLINA, P.A., et al.,
Respondents.

-----/

HEARING BEFORE THE HONORABLE
MARTIN H. COLIN

Taken before Michael Todd Berkowitz, Shorthand
Reporter and Notary Public in and for the State of
Florida at Large.

- - -

200 West Atlantic Avenue
Delray Beach, Florida 33344
Monday, October 28, 2013
4:00 P.M. - 5:09 P.M.
Michael T. Berkowitz, Court Reporter.

1 APPEARANCES:

2 On behalf of the Petitioner:

3 HUTH & PRATT

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5 BY: BRANDAN J. PRATT, ESQ.

6

On behalf of Ted Bernstein, Donald R. Tescher, Esq.,

7 Robert L. Spallina, Esq:

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P R O C E E D I N G S

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3 THE COURT: All right. Good Afternoon.
4 Judge Colin. 2011CP000653. The Estate of
5 Shirley Bernstein. Can everyone make their
6 appearances.

7 MR. BERNSTEIN: Ted Bernstein.

8 MR. MANCERI: Good afternoon, Your Honor.
9 Mark Manceri. I'm here on behalf of Ted
10 Bernstein as successor personal representative
11 of the Estate of Shirley Bernstein, and I'm
12 here on behalf of Donald Tescher and Robert
13 Spallina.

14 MR. PRATT: Good afternoon, Your Honor.
15 Brandan Pratt appearing on behalf of Eliot
16 Bernstein, and I also have with me here today
17 Eliot Bernstein and his wife, Candace
18 Bernstein.

19 THE COURT: Okay. So this was a hearing
20 that was set pursuant to an order of September
21 24, 2013, that order being an order on notice
22 on emergency motion to freeze assets, and it
23 says the purpose of this hearing is to address
24 any alleged improprieties or defects in the
25 form of pleadings or other documents submitted

1 to the Court in furtherance of the Estate of
2 Shirley Bernstein which was previously closed.

3 MR. PRATT: Your Honor, I'd like to evoke
4 the rule of sequestration.

5 THE COURT: Hold on. I'll be right with
6 you. Okay. All right. The rule was evoked.
7 Are there any witnesses on either side that
8 are not parties that are going to testify?
9 Please stand up.

10 MR. PRATT: Non parties, Your Honor?

11 THE COURT: Parties are allowed to stay.

12 MR. PRATT: I believe Mr. Tescher and Mr.
13 Spallina are non parties to the estate
14 proceedings.

15 MR. MANCERI: No. They have been named by
16 your client.

17 THE COURT: They're in the heading of the
18 adversary proceeding.

19 Okay, what's your name, ma'am?

20 MS. MORAN: Kimberly Moran.

21 THE COURT: So Kimberly, you may or may not
22 be called as a witness. You need to wait
23 outside. You can't allow anyone to discuss
24 their testimony in your presence, or you
25 participate in that as well. If someone

1 violates what I just said, find my bailiff,
2 let me know, and we'll deal with them.

3 MR. ROTH: Just to let you know, Your
4 Honor, David Roth on behalf of Ms. Moran.

5 THE COURT: Okay. Ms. Moran, that lady
6 that's just leaving?

7 MR. ROTH: Yes, sir.

8 THE COURT: Just for my benefit, the
9 lawyers can tell me, Ms. Moran is employee
10 of --

11 MR. MANCERI: Tescher & Spallina, P.A.

12 THE COURT: I remember that. I've got it.
13 So it sounds like, Mr. Pratt, I think probably
14 from an orderly fashion, since I reserved this
15 time for you to raise on behalf of your client
16 some irregularities that we spoke about, I
17 think you're up.

18 MR. MANCERI: Your Honor, if I might, just
19 to refresh your memory, we had filed a motion
20 to reopen the estate. Tescher & Spallina had
21 filed a motion to reopen. Mr. Eliot Bernstein
22 was on here on his emergency motion that was
23 denied; that's what he filed.

24 THE COURT: I said there was no -- so the
25 order I have is the order on the emergency

1 motion to freeze assets. I said there's no
2 emergency.

3 MR. MANCERI: Correct.

4 THE COURT: But I announced what the
5 purpose of the hearing was.

6 MR. MANCERI: Yes. You did. It's embodied
7 of the order, Your Honor.

8 THE COURT: So you want to go forward to
9 address irregularities in the pleadings that
10 Eliot says exist.

11 MR. MANCERI: I believe that's the way we
12 left it.

13 MR. PRATT: Your Honor, I disagree in that
14 he filed a motion to reopen the estate, an
15 agreed order --

16 THE COURT: I reopened it. That's not an
17 issue. So whose pleadings are filed that are
18 challenging the propriety of the pleadings?

19 MR. MANCERI: That would be Mr. Bernstein.
20 He filed it, but he filed it as part of the
21 emergency motion.

22 THE COURT: I understand. I'm not
23 hearing -- I'm not sure what you're getting at
24 Mr. Manceri, so what is it that you're seeking
25 to do?

1 MR. MANCERI: I'm just addressing the order
2 Judge, that you announced, that's all I'm
3 addressing.

4 THE COURT: Paragraph three of the
5 September 24th order, it says the purpose of
6 today's hearing is to address any alleged
7 impropriety or defect in the form of the
8 pleadings or other documents submitted to the
9 court in furtherance of the closing of the
10 Estate of Shirley Bernstein.

11 MR. MANCERI: That's correct, Your Honor.

12 THE COURT: The person who filed the
13 request to, or who raised an allegation of
14 impropriety, was who?

15 MR. MANCERI: Actually, it's my position
16 that Mr. Tescher or Mr. Spallina raised it
17 voluntarily in their petition to reopen.
18 While you did reopen it, they were the one's
19 who actually brought the issue forward.

20 THE COURT: But I see their August 28th
21 motion, I reopened the estate, so they said
22 that they thought they wanted to give, using
23 their words, persons the opportunity to cure
24 the irregularities. Someone needs to formally
25 identify the irregularities, unless you

1 stipulate what those are.

2 MR. MANCERI: There's no written
3 stipulation as to that.

4 THE COURT: So to do this in an orderly
5 way, which is all I'm getting at, you think
6 that you -- if I let you go first on your
7 side, Mr. Manceri, what irregularities, if
8 any, are you going to point out took place?

9 MR. MANCERI: We're going to point out,
10 take you through the issue of the submittance
11 of the original waivers which were returned by
12 the clerk, because of your method of doing
13 that, that required notarization, and then
14 take you through the affirmation of those
15 original waivers with current affidavits from
16 the beneficiary reaffirming that they, in
17 fact, acknowledge the original waivers which
18 were not notarized with current addresses,
19 with original affidavits attached to them, and
20 we would walk the Court through that exercise.

21 THE COURT: Stop there. What do you want
22 to tell me, Mr. Pratt, as to why you should go
23 first?

24 MR. PRATT: I think that whole thing was
25 brought about by the fact that my client,

1 Eliot Bernstein, in fact filed the emergency
2 motion. As far --

3 THE COURT: That gets your nowhere. So
4 we're long passed that point.

5 MR. PRATT: Number two, that they were
6 seeking to reopen the estate. The estate was
7 already reopened, and I don't know why they
8 would be challenging the documents that they
9 used to close the estate, but for Mr.
10 Bernstein here filing his emergency motion in
11 which although it was titled emergency, it
12 bought up all of these issues that we're
13 currently here before this Court. It was only
14 after he filed the motion in which he was
15 contesting the validity of the waivers that
16 this Court -- that they ended up filing their
17 motion to reopen the estate. I wasn't --

18 THE COURT: So what benefit is there to
19 this process for you to go first? Both sides
20 are going to go. We're only talking about
21 who's going first.

22 MR. PRATT: First off, he's the petitioner.
23 I don't know that they're going to necessarily
24 address all of the issues that we're going to
25 bring up.

1 THE COURT: So listen carefully. Mr. Pratt
2 goes first.

3 MR. MANCERI: Yes, sir.

4 THE COURT: That way we can move along. Go
5 ahead.

6 MR. PRATT: All right. I just brought some
7 legal authority here that I'd like to point
8 out. May I approach, Your Honor?

9 THE COURT: Sure. I'll look at that at the
10 right time.

11 MR. PRATT: I'm going to give a brief
12 opening statement before I call my first
13 witness, just to give an overview of why we
14 want the estate, I guess, to remain open,
15 rather than being closed. I'm kind of a
16 latecomer to the case, but I realize that's
17 kind of the issue here.

18 THE COURT: That would be helpful. Tell me
19 what the issue is; that's true.

20 MR. PRATT: This issue is, as far I
21 understand it, whether or not the estate will
22 remain open. Although there was an order that
23 reopened the estate, my understanding
24 essentially is the personal representative
25 essentially wants at this hearing to re-close

1 the estate.

2 THE COURT: Based upon the most recent
3 waivers of accountings, petition for
4 discharge, and the pleadings filed October
5 23rd; is that correct?

6 MR. MANCERI: It's not exactly correct,
7 Your Honor. We have no petition for discharge
8 filed at the moment. The order specifically
9 addresses what you're going to hear today, we
10 had this whole thrust in parity if you
11 remember at the end of the last hearing with
12 Mr. Bernstein who was without counsel at the
13 time, that's why the order pursuant to your
14 ruling is crafted the way it's crafted. It's
15 a limited issue. You told Mr. Bernstein we're
16 not going to be discussing the Shirley
17 Bernstein Trust and all the distributions. We
18 went through this whole anemic experience.
19 You went through that whole thing.

20 THE COURT: So the issue is, is the estate
21 going to remain open, or be closed, but
22 there's no petition for discharge to close it,
23 I'm told.

24 MR. PRATT: Or essentially address the
25 validity of the waivers. If all of the

1 beneficiaries have signed off on it, and we
2 contend that they haven't, it would be a
3 foregone conclusion that the estate would then
4 be closed.

5 THE COURT: So who are the beneficiaries
6 that have to sign off?

7 MR. PRATT: Well, I mean that's one of the
8 issues, because --

9 THE COURT: From your point of view, who
10 are the beneficiaries?

11 MR. PRATT: Our point of view is the
12 beneficiaries that need to sign off would be
13 one of the decedents, essentially.

14 THE COURT: Who?

15 MR. ATTY: One of the decedents, Simon
16 Bernstein, and then also potentially Eliot,
17 three of Simon and Shirley's children, Eliot,
18 Lisa and Jill, and if they contend there was
19 a --

20 THE COURT: Just who do you say that -- who
21 are the people that need to sign off? Simon,
22 Eliot, Lisa, Jill.

23 MR. PRATT: Yea. If they contend there was
24 a valid power of appointment executed before
25 the estate was closed, then there would be a

1 total of six grandchildren that would have to
2 sign the waivers in some sort of capacity. If
3 they were minors, then they would have to have
4 that parents sign waivers, that sort of
5 capacity, or an administrator ad litem.

6 THE COURT: Okay. Go ahead.

7 MR. PRATT: There is also some issue
8 whether or not the power of appointment
9 expanded to include for additional
10 grandchildren. Some of those grandchildren
11 are over the age of 18, and if they contend
12 that there was a power of appointment that was
13 validly executed, which I believe that's the
14 position they're taking, that would also
15 include waivers by four additional
16 grandchildren, Eric, Michael, Eliot, and
17 Molly, and there would have been no documents
18 or waivers signed by any grandchildren, that
19 have been filed in this case.

20 And as far as that's concerned, Eliot's
21 waiver was invalidly executed. The reasons
22 why it was essentially, as shown in the
23 Sustrassen case, there has to be an
24 intentional relinquishment of the right. The
25 evidence that we're going to present is going

1 to show that he signed the waiver, but in
2 conjunction with him signing the waiver he was
3 always under the impression he would still get
4 financial information associated with the
5 estate. They sent him the waiver without any
6 financial information. He sent it back. He
7 sent it along with an e-mail saying, I'm still
8 going to get all this financial information.
9 There's a series of e-mail's spanning
10 throughout the next year, e-mail's and letters
11 from Mr. Bernstein's prior counsel, in which
12 he requested the information. And then as far
13 as Eliot Bernstein's waiver is concerned, this
14 court should not consider that to be valid.

15 Also, many of the waivers have been
16 forged. I think the Court might recall from
17 the last hearing there was a series of waivers
18 that had been forged, that occurred after the
19 prior personal representative had, in fact,
20 died, and so that's another impropriety that
21 we are going to present evidence on.

22 THE COURT: Okay. Then so if I find that
23 Eliot's waiver was invalidated, you want the
24 estate to remain open.

25 MR. PRATT: Exactly.

1 THE COURT: And then do what?

2 MR. PRATT: We want to receive the
3 financial information that he's been
4 requesting since the estate was opened. He
5 didn't even find out he was a beneficiary
6 until the time he received the waiver, and
7 essentially we want to receive financial
8 information and want a proper estate
9 accounting, and if everything is as they say
10 it is, then the estate will be closed after
11 the production of various documents and a
12 final accounting if we need to have a final
13 accounting.

14 THE COURT: So if you prove that there were
15 prior waivers that had been forged, what does
16 that do?

17 MR. PRATT: Well, as far as the forgery
18 goes, those are going to be invalid.

19 THE COURT: I'm told now that those same
20 individuals, and Mr. Manceri correct me if I'm
21 wrong, have now filled out and sent in new
22 waivers.

23 MR. MANCERI: Not only that, Judge, they
24 have already been filed.

25 THE COURT: That's what I mean; otherwise,

1 I would not have them in the file.

2 MR. PRATT: Yea. As far as those waivers
3 go, that's fine except for two important
4 points. One is that Simon Bernstein's waiver,
5 which was one of them that was forged, he's
6 deceased, so obviously he could not have
7 signed that waiver, so without some waiver or
8 something from the personal representative of
9 his estate, it wouldn't be able to close, and
10 then in addition to that although there are
11 several children that have reaffirmed their
12 waivers, it would not apply to all of the
13 grandchildren who don't have any waivers on
14 file.

15 THE COURT: So let's put aside for a moment
16 that Eliot's saying I don't want my waiver
17 recognized, I want financial information, I
18 may want an accounting, and see what goes from
19 there, you only represent him, Eliot; correct?

20 MR. PRATT: That's right.

21 THE COURT: Is Simon represented here, or
22 anyone, since Simon's deceased, anyone on his
23 behalf here for him?

24 MR. PRATT: There was an order that
25 appointed Ted as the personal representative

1 of his estate when it was reopened.

2 THE COURT: Is he, Ted Bernstein, PR of
3 Simon Bernstein, complaining about any aspect
4 of Shirley Bernstein's estate, including your
5 position that his, Simon's wavier may have
6 been improper?

7 MR. PRATT: I'm unaware of any complaints
8 he made. We questioned whether or not he has
9 a conflict of interest, whether or not he is a
10 co-defendant, in which they then allege that
11 millions of dollars have been taken, and there
12 is an association with the estate, and we
13 think there is a conflict with his estate in
14 the sense that Ted may have absconded with
15 millions of dollars without Sy's knowledge,
16 and therefore they may have a conflict of
17 interest in that respect.

18 THE COURT: I would deal with that in
19 something filed in Simon's estate. We're
20 limited only to Shirley's estate here.

21 MR. PRATT: Yes.

22 THE COURT: And the fact that the other
23 individuals who supposedly had their waivers
24 executed improperly, who now may have tried to
25 cure them, they're not seeking any further

1 relief from Shirley's estate; is that true?

2 MR. PRATT: I believe Eliot is the only one
3 who is seeking to have documents produced and
4 have a financial accounting issued.

5 THE COURT: So from a practical point of
6 view, which we always have to keep our eye on
7 the ball, is there any reason -- I know from
8 the last hearing that there was a lot about
9 the alleged impropriety of the prior waivers,
10 but now that you have summarized the issues as
11 you have, is there any reason why, today, I
12 would go beyond, now that I have opened
13 Shirley's estate and I am entering an order
14 dealing with Shirley's estate, I wouldn't
15 focus in on the issue whether Eliot has waived
16 as a beneficiary whatever rights purportedly
17 he had waived, and if I say no waiver, what to
18 do about it. Is that the only area that Eliot
19 could get some relief from?

20 MR. PRATT: That and whether or not this
21 court believes that the grandchildren would
22 have also had to sign waivers in order to have
23 the estate closed.

24 THE COURT: The grand children of who?

25 MR. PRATT: The grandchildren of Shirley

1 Bernstein's estate.

2 THE COURT: But her children, the parents
3 of those grandchildren are the one's who
4 signed the waivers?

5 MR. PRATT: Yea. But they signed
6 essentially, and there was no statement in
7 there that they were signing on behalf of
8 their children. And in addition, there's a
9 contention that some of the grandchildren are
10 beyond the age of 18, so it would not be any
11 sort of natural guardianship that would occur.

12 THE COURT: So what's Eliot's standing to
13 deal with that?

14 MR. PRATT: What's his standing to deal
15 with that? The alleged --

16 THE COURT: The alleged issue that
17 grandchildren may or may not be participating
18 in this proceeding.

19 MR. PRATT: As far as whether or not the
20 estate was properly closed or not.

21 THE COURT: Even though he may have no
22 financial interest in where that issue may go?

23 MR. PRATT: He does have a financial
24 interest in it.

25 THE COURT: How is that an interest?

1 MR. PRATT: Because that would change the
2 way the estate was distributed.

3 THE COURT: Okay. How?

4 MR. PRATT: Shirley's will devises her
5 assets to three of her five children. It
6 actually devises it to a trust, which provides
7 for her husband, which ultimately is supposed
8 to go to three of her five children. There
9 was a power of appointment in association with
10 one or more of those trusts that gave her
11 husband, Simon, the ability to potentially
12 change the beneficiaries, but it was a limited
13 power of appointment, and I think a question
14 exists of, one, whether that document was
15 validly executed or not, and two, did that
16 document go above and beyond what was required
17 or what was allowed, because there's a
18 definition section underneath Shirley's trust
19 that says she defines her children as Eliot,
20 Lisa, and Jill, and specifically says for
21 purposes of this trust Ted and Pam shall be
22 treated as predeceased, and all their children
23 should be treated as predeceased. So if there
24 is a determination or some sort of
25 distribution in which now they're telling

1 Eliot that he is a beneficiary, and now all
2 the sudden he isn't a beneficiary of the
3 estate --

4 THE COURT: You already made your point.
5 We will deal with whether Eliot is a
6 beneficiary, whether he's had a valid wavier,
7 I've got that part down, but the question is
8 are there any other issues I need to deal with
9 today.

10 MR. PRATT: That I think is the primary
11 issue, but also the issue of whether certain
12 people are considered beneficiaries of the
13 estate.

14 THE COURT: For Eliot to raise that, he has
15 to be an interested person in the outcome of
16 that proceeding.

17 MR. PRATT: He is.

18 THE COURT: How is he affected by whether
19 the grandchildren are deemed to be
20 beneficiaries or not?

21 MR. PRATT: Because if -- it's kind of a
22 two-stage analysis. If the grandchildren
23 aren't beneficiaries, then he is not a
24 beneficiary. Then the second phase of that is
25 whether or not if the power of appointment was

1 validly executed, then the question becomes
2 are his children entitled to half of the
3 estate, or are they entitled to three-tenths
4 of the estate.

5 THE COURT: Okay. Tell me what the will
6 says.

7 MR. PRATT: The will devices everything to
8 a trust.

9 THE COURT: So they disagree with that.
10 The will should say what it says, there
11 shouldn't be too much dispute about that. Are
12 you comfortable you know what it says, because
13 as soon as you said that --

14 MR. PRATT: I welcome to hear their
15 interpretation.

16 THE COURT: Mr. Manceri, discipline
17 yourself right now and only tell me that you
18 can participate if you can answer my
19 questions. I don't want advocacy now. Tell
20 me what the will says.

21 MR. MANCERI: The will says that all the
22 tangible personal property goes to Simon, who
23 survived his wife, Shirley, and the residue
24 goes into what's known as an existing trust,
25 trust which we will call the Shirley Bernstein

1 Trust for purposes of the hearing.

2 MR. PRATT: I agree with that.

3 THE COURT: So at the end of the day of
4 this estate litigation is there a contest that
5 that's the provisions of the will? You said
6 that you agree.

7 MR. PRATT: Yes.

8 THE COURT: So whatever Shirley had
9 available to devise personalty to Simon, who's
10 deceased and we can maybe deal with that in
11 his estate, everything else to Shirley's
12 trust.

13 MR. PRATT: Yes.

14 THE COURT: So this order limited us to
15 Shirley's estate, not to her trust. We were
16 pretty clear. Maybe I'm just confused.

17 MR. PRATT: That's the financial. The
18 analysis goes a little bit deeper than that,
19 because --

20 THE COURT: If Shirley's assets, other than
21 the personalty goes to her trust, none of the
22 children are the beneficiaries, or
23 grandchildren are the beneficiaries under
24 Shirley's will. Her trust is; correct?

25 MR. PRATT: That's right, but --

1 THE COURT: Once the trust receives
2 whatever assets there are, the provisions of
3 the trust will rise and fall on who gets what;
4 is that true, or not?

5 MR. PRATT: Pretty much.

6 THE COURT: So his waiver, going back, was
7 the waiver a waiver that said to Eliot waive
8 whatever interest you may have in Shirley's
9 estate?

10 MR. PRATT: No. It was just a waiver of a
11 financial accounting and service of a petition
12 for discharge, just the normal estate closing
13 waiver. That's all it was.

14 THE COURT: It sounds like though that on
15 the estate level of Shirley this is really a
16 simple matter. Is there something that I'm
17 missing, on the estate level? You know, I
18 mean one thing we learned here is we pick the
19 manner in which we do our battles. It sounds
20 like on the estate level Shirley's probate
21 estate is simple. Simon gets her personalty,
22 and her trust gets everything else. What
23 could be more simple than that?

24 MR. PRATT: I would agree that it is
25 simple.

1 THE COURT: Okay. So you may have some
2 litigation, some action pending in her trust
3 case. Is there?

4 MR. PRATT: There is no trust case, right
5 now, and I just want to point out a couple of
6 things as far as the trust code is concerned,
7 and these are some of the statutes and court
8 rules that I've handed you. Florida probate
9 5.240 basically says, if you have a situation
10 where the personal representative of an estate
11 is the same, it says a pour over will type of
12 situation pours all the assets into the trust,
13 and that trustee is the same, the qualified
14 beneficiaries of the trust are considered
15 interested parties for the estate proceedings.

16 THE COURT: Let's assume I make everybody
17 interested, you're still telling me that the
18 command of the estate is --

19 MR. PRATT: We just want to know.

20 THE COURT: -- to pour over everything to
21 the trust. Let me read between the lines
22 here. I don't know what the trust says. I'm
23 not asking about that. Is the issue whether
24 the PR of the estate -- and who's the PR, Ted?

25 MR. PRATT: Yes. Currently.

1 THE COURT: Whether he is carrying out
2 Shirley's mandate by transferring all of
3 Shirley's assets to the trust; is that an
4 issue?

5 MR. PRATT: I think that's it. We want to
6 know how much was in her estate, and we want
7 simple information related to the estate
8 administration. The estate inventory said
9 there was \$25,000. Eliot Bernstein believes
10 they were worth millions of dollars, and there
11 could have been assets entitled to the trust,
12 but this is part of a bigger picture. We want
13 to see what happened in the estate, so that we
14 can make sure everything got properly
15 transferred over to the trust.

16 THE COURT: Tell me what the provisions of
17 the trust say. Do you know?

18 MR. PRATT: I know what the provisions of
19 the trust say. Essentially there is a trust
20 that provides for the benefit of her husband
21 while he is alive, and then upon her death the
22 assets are supposed to be distributed to three
23 of her five children.

24 THE COURT: Who?

25 MR. PRATT: Eliot, Lisa, and Jill. Now,

1 there was also a power of appointment that
2 was -- I guess the trust also contained
3 provisions that said for the purposes of the
4 trust two of her five children, Ted and Pam,
5 should be treated as predeceased. And then
6 there is a power of appointment that's named
7 in Simon's will that says I want to appoint
8 all of this money to all of his grandchildren,
9 which is a little bit different from the
10 provisions that were in Shirley's document.

11 THE COURT: So I'm just lost in one area,
12 because you mentioned Simon's will, so how
13 does Simon's will get involved?

14 MR. PRATT: Simon's will gets involved
15 because Shirley gave him a power of
16 appointment, a limited power of appointment,
17 to change the beneficiaries.

18 THE COURT: In the trust.

19 MR. PRATT: Exactly.

20 THE COURT: So Simon during his lifetime
21 could or not execute the power of appointment.

22 MR. PRATT: Exactly.

23 THE COURT: Did he?

24 MR. PRATT: There is a power of appointment
25 that exists in his will.

1 THE COURT: But you can exercise a power of
2 appointment in a will, so when he dies, as
3 part of his will he's saying here's how I want
4 to exercise the power of appointment that
5 Shirley gave me.

6 MR. PRATT: Yes.

7 THE COURT: That only manifests itself
8 because he survived her. What does he do with
9 that power of appointment.

10 MR. PRATT: As far as we understand, he
11 attempts to name -- he says it goes to all my
12 grandchildren, so there's 10 of them.

13 THE COURT: So bypassing, Eliot, Lisa, and
14 Jill.

15 MR. PRATT: And Ted and Pam.

16 THE COURT: Ted and Pam already out. So
17 the five children are out, and the 10
18 grandchildren are in.

19 MR. PRATT: Exactly. There's a question
20 whether that power of appointment was used
21 more broadly than was given to him.

22 THE COURT: So in what case does that get
23 litigated?

24 MR. PRATT: That would not be in this case.
25 That would have to be in a case involving his

1 estate, or likely his trust, or maybe a case
2 that was against his trust and then put into
3 his estate. We don't even know if that
4 happened.

5 THE COURT: So let's get back to Shirley's
6 estate.

7 MR. PRATT: Yes.

8 THE COURT: So it sounds like Eliot may be,
9 either him or his children if the power of
10 appointment was executed, a beneficiary of
11 Shirley's trust. I'm working backwards. So
12 he wants to get information to make sure that
13 what Shirley owned at the time, or had an
14 ownership interest in at the time of her death
15 was transferred properly through her will and
16 poured over into her trust; is that what he
17 wants?

18 MR. PRATT: Yes.

19 THE COURT: Is that something that he is
20 legally entitled to?

21 MR. MANCERI: Your Honor, it's our
22 contention he is not legally entitled to it,
23 because he did a full waiver of every interest
24 in the estate.

25 THE COURT: But for the waiver, he wouldn't

1 be interested. Would he be allowed to that
2 information?

3 MR. MANCERI: His children would
4 technically be interested. None of the
5 children are beneficiaries, as you correctly
6 stated, Your Honor.

7 THE COURT: The trust is the beneficiary.
8 You mean of the trust.

9 MR. MANCERI: That's correct.

10 THE COURT: Because a power of appointment
11 was executed.

12 MR. MANCERI: Right. By Simon to all the
13 grandchildren.

14 THE COURT: But I'm trying to get passed
15 some of the things that have to be ultimately
16 litigated in some other forum. Are we down to
17 whether the waiver was validly executed or
18 not?

19 MR. MANCERI: I think that's the bulk of
20 it, certainly, Your Honor, yes, whether the
21 waiver was validly executed.

22 THE COURT: If the waiver was not validly
23 executed, what Mr. Pratt is saying is he wants
24 financial information that may include an
25 accounting so he can determine, he, Eliot,

1 that what Ted as PR transferred over from
2 Shirley's estate poured over into her trust is
3 what should have gone.

4 MR. MANCERI: An accounting of the probate
5 estate he's talking about.

6 THE COURT: The probate estate.

7 MR. MANCERI: Right. I think he can
8 theoretically arguably ask for that, Your
9 Honor, on behalf of his children.

10 THE COURT: I know you attacked the waiver,
11 and you say it was valid. He says it's not.
12 What's the harm by giving him the information,
13 the financial disclosure of what Shirley's
14 estate poured over into the trust.

15 MR. MANCERI: Simply, Your Honor, that he
16 signed the waiver and we think this is all
17 done and behind us. If he wants to proceed
18 about a trust accounting he could get that
19 same information in the trust arena by asking
20 on the receipt side.

21 THE COURT: Every time this happens in a
22 trust case everyone says there's some bar, but
23 you didn't ask for it or get it in the estate
24 case. That's the experience I get when that
25 happens.

1 MR. MANCERI: We would certainly like --

2 THE COURT: So in Shirley's estate, was
3 there an inventory done?

4 MR. MANCERI: I presume there is.

5 MR. PRATT: There was.

6 MR. MANCERI: You can tell you, Your Honor,
7 I want to clarify, and you asked me not to be
8 an advocate, but there are a couple of facts I
9 want to clear up. The co-personal
10 representatives of Simon's estate are Mr.
11 Spallina and Mr. Tescher, not Ted Bernstein.
12 Judge French has Simon Bernstein's estate, in
13 case you weren't aware of that.

14 THE COURT: Okay.

15 MR. MANCERI: To go back --

16 THE COURT: I'm happy. That's good. Let
17 someone else do it.

18 MR. MANCERI: We brought that up at the
19 last hearing, but I don't know if you recall
20 that or not, Judge. We would like to address
21 the waiver. Yes, there was an accounting
22 done. I don't know if we have the inventory.
23 It certainly would be in the file if it was
24 done. I don't have a copy handy.

25 THE COURT: Even if he did a waiver, I can

1 still give him the inventory. I can open it.
2 I can get it to him.

3 MR. PRATT: We have the inventory.

4 MR. MANCERI: They have the inventory.

5 MR. PRATT: We received the inventory after
6 the estate was closed.

7 THE COURT: You got the inventory. Was
8 there an accounting in the estate of Shirley
9 Bernstein?

10 MR. MANCERI: If it was waived, Your Honor,
11 that's the point.

12 THE COURT: All right. So what are the
13 other financial documents other than the
14 inventory that Eliot wants, Mr Pratt?

15 MR. MANCERI: Judge, if I might, the
16 inventory listed \$25,000 of tangible personal
17 property, which all went to Mr. Bernstein as
18 surviving spouse.

19 THE COURT: Okay. And that's it.

20 MR. MANCERI: That's it.

21 THE COURT: So according to the inventory
22 there were no assets poured over from
23 Shirley's estate into the trust.

24 MR. MANCERI: It was all funded pre-death.
25 That's my understanding, Your Honor.

1 MR. PRATT: I mean, we don't have any
2 documents to support that verification. We
3 don't know how the attorneys have been paid,
4 and we don't have any verification they were
5 the only assets that were in there. Plus --

6 THE COURT: The inventory is a verified
7 document.

8 MR. PRATT: Right.

9 THE COURT: So that's -- so you have an
10 inventory that says personalty only, and I
11 could look it up. It's sealed. I can get it,
12 but you have it already. If that's what it
13 says, then Ted as PR is saying that's what I
14 turned over as PR, and so Simon got the
15 personalty.

16 MR. MANCERI: Simon was the PR at that
17 time, Your Honor.

18 THE COURT: He took it, that's right,
19 because Ted got appointed when Simon died, and
20 then nothing then is passing through the will,
21 and Mr. Manceri just said to the extent to
22 which Shirley's trust may have assets, it was
23 funded pre-death, which happens, and there is
24 no document in the estate that's going to
25 verify that.

1 MR. PRATT: I mean if that's truly the
2 case, then why not just produce an accounting?

3 THE COURT: He's saying that's the case.
4 Other than the lawyers saying that, I don't
5 know. He's saying that was done, but more
6 importantly Mr. Eliot can maybe do whatever
7 he wants to do in the trust case to see what
8 went into the trust, and that would be what
9 Mr. Manceri is describing as the pre-death
10 funding. But for purposes of Shirley's estate
11 trying to put things in a step-by-step
12 process, if her will says what it said, the
13 inventory says no assets other than personalty
14 of Shirley that went to Simon -- I mean, I'm
15 here to determine should the estate be closed
16 and then go to Judge French, have a good time.
17 What else is there really to accomplish, even
18 though we may have had a problem with the
19 waivers, I understand that, but now they've
20 reaffirmed them, so to -- I mean to spank
21 somebody that may deserve to get spanked for
22 doing something wrong, how does that put
23 dollars, or benefits, in Eliot's pocket?

24 MR. PRATT: I guess part of it is the fact
25 that there hadn't been really any information

1 provided all along. He never really got any
2 information until the estate was actually
3 closed, so I mean that's part of his reasoning
4 for wanting to reopen the estate and get the
5 financial information. I think --

6 THE COURT: The answer is none. There is
7 no estate, they're representing. I can put
8 Ted under oath let you question him, but the
9 issue is, which I'll do, whether there are any
10 assets other than what's reflected on the
11 inventory, and he'll say, I assume, based on
12 what Mr. Manceri just told me, he'll say no.
13 And so you can't produce financial documents
14 on things that don't exist to the matter that
15 we're speaking about.

16 MR. PRATT: I agree, but there could be an
17 accounting that was produced.

18 THE COURT: You're not going to produce an
19 accounting of nothing, and the purpose of an
20 accounting is to get some verification that
21 what was processed through the PR's hands is
22 accurate. He'll testify in a moment just what
23 Mr. Manceri probably told us, that the answer
24 is nothing.

25 MR. PRATT: Okay.

1 THE COURT: So how does that --

2 MR. PRATT: I agree if what their
3 representations are true it's possible we
4 could receive some financial information.

5 THE COURT: Other than -- I mean, you got
6 the inventory. That shows basically that
7 there are no estate assets other than
8 personalty, which I assume is not an issue
9 here. So today I'm not going to have them
10 draw up an accounting that says nothing,
11 because that doesn't do any good. Do you
12 agree? Who's that going to benefit if he goes
13 through the process of actually filing an
14 accounting that says what the inventory says,
15 personalty and nothing else.

16 MR. PRATT: Can we take a short break?

17 THE COURT: Absolutely. Sure. Go ahead.

18 (Thereupon, a short recess was taken.)

19 THE COURT: What did he say?

20 MR. PRATT: Your Honor, my client questions
21 the accuracy of the inventory and would like
22 the ability to utilize the estate proceedings
23 to verify it's accuracy.

24 THE COURT: Well, I appreciate that he
25 challenges that, but you haven't told me what

1 basis he challenges that on.

2 MR. PRATT: Well, by virtue of the fact he
3 believes his mother and father were worth
4 millions and millions of dollars, yet the
5 inventory of the estate contains only for
6 \$25,000.

7 THE COURT: But we heard Mr. Manceri tell
8 us that Shirley transferred, during her
9 lifetime, assets to her trust. You heard that
10 as well. Plus, I know nothing about what
11 Simon did with his estate, and Simon, he may
12 have owned assets jointly and passed outside
13 the estate. So the inventory is a narrow
14 window of just that which passes through.
15 There are people, and I'll say this to Eliot,
16 we deal with this all the time, people
17 sometimes are super rich and they don't even
18 have a probate estate, because everything is
19 titled jointly, or they fund the trust in
20 advance, and there is no probate. People
21 don't like to have probate. So that very well
22 is what happened, but I'm willing to at least
23 start. I want you to put on your client and
24 take some testimony, because we had accuracy
25 issues, Mr. Manceri, on the accuracy of the

1 inventory, and then to state on the record
2 what he knows about, that he's done a search
3 for other assets but personalty, and there's
4 nothing else that Shirley had in her probate
5 estate to be poured over into her trust. That
6 is what you were told.

7 MR. MANCERI: Your Honor, I like to put on
8 two people.

9 THE COURT: You might want that, but I tell
10 you what I want. I want the PR to do that
11 first, and then we see.

12 MR. MANCERI: Judge, I wasn't prepared to
13 address the inventory. I don't have a copy of
14 the inventory at my disposal. If anybody has
15 a copy, I'll be glad to use that. Just to be
16 clear, Ted was not the PR at the time this
17 inventory was filed.

18 THE COURT: But he's in charge of the
19 estate once he takes it over.

20 MR. MANCERI: He just got appointed a
21 couple of weeks ago, but yes.

22 THE COURT: He'll address it, otherwise I
23 have to give him more time to do his work and
24 not close the estate. You want the estate
25 closed; right?

1 MR. MANCERI: We want to address what the
2 court order said. We don't have a petition of
3 discharge filed.

4 THE COURT: You want to file one to close
5 the estate.

6 MR. MANCERI: Eventually, yes.

7 THE COURT: Come on up Ted.

8 MR. MANCERI: Mr. Bernstein, please.

9 Judge, I'm still waiting for the inventory.

10 THE COURT: He'll give it to you. Do you
11 have it? I mean, I have it. Do you have it
12 Mr. Pratt?

13 MR. PRATT: I don't think so.

14 (A brief pause.)

15 THE COURT: Hold on. I'll get you a copy.

16 (A brief pause.)

17 THE COURT: I have a question, Mr. Manceri.
18 I want to make sure of one thing, the
19 inventory was signed by Simon on August 29,
20 2011. When did he die?

21 MR. MANCERI: Simon died a little more than
22 a year ago.

23 THE COURT: He was alive then.

24 MR. MANCERI: Yes, sir.

25 THE COURT: All right.

1 MR. MANCERI: I think September, 2012 he
2 died --

3 THE COURT: All right.

4 MR. MANCERI: -- if my memory serves me
5 correctly. And Mrs. Bernstein died the prior
6 December. 2010, forgive me.

7 THE COURT: There is a petition for
8 discharge on file.

9 MR. MANCERI: That's the original petition.
10 That was probably for Simon. Now we have to
11 do one for Ted, Your Honor.

12 THE COURT: All right.

13 Whereupon Mr. Ted Bernstein was sworn in by
14 The Court.)

15 DIRECT EXAMINATION

16 BY MR. MANCERI:

17 Q. State your name for the record, please.

18 A. Ted Bernstein.

19 Q. Mr. Bernstein, are you one of the children of
20 Shirley and Simon Bernstein?

21 A. Yes. I am.

22 Q. Do you have any siblings?

23 A. Yes. I do.

24 Q. What are their names?

25 A. Pam, Simon, Eliot Bernstein, Jill and Lisa.

1 Q. Are you aware of the fact that your father,
2 Simon, was the named personal representative of your
3 mother, Shirley's estate?

4 A. I am, yes.

5 Q. Did you have hands-on working participation as
6 far as the administration of your mother's estate, with
7 your father?

8 A. Did not.

9 Q. I'm going to show you a document which the court
10 bailiff has given us, which is entitled, "Inventory."
11 Are you familiar with your father's signature?

12 A. I am.

13 Q. Take a look at this document on page two, and
14 tell me if that's your father's signature, to the best
15 of your knowledge.

16 A. Yes. It is.

17 Q. Are you familiar with a gentleman named Robert
18 Spallina?

19 A. Yes.

20 Q. How do you know that name, and how is it familiar
21 to you?

22 A. He is the personal representative of my father's
23 estate.

24 Q. Do you know whether or not he was one of the
25 attorneys that handled the administration of your

1 mother's estate?

2 A. I believe he was, yes.

3 Q. This inventory reflects, and these are assets
4 that would be in your mother's individual name, not in
5 her trust, not in her joint name, not with a beneficiary
6 named on them, of an estimated value of \$25,000
7 described as furniture, furnishings, household goods and
8 personal effects, do you see that?

9 A. I see that.

10 Q. Do you have any personal knowledge as to the
11 accuracy of the information here as signed under
12 penalties of perjury by your father?

13 A. I think that my personal knowledge is that would
14 be accurate.

15 Q. Do you have any information of your personal
16 knowledge that you acquired or knew about from the time
17 prior to you becoming appointed personal representative
18 of your mother's estate, or since you became personal
19 representative of your mother's estate, that would
20 materially change this \$25,000 figure?

21 A. I do not.

22 MR. MANCERI: I don't have any further
23 questions, Your Honor.

24 THE COURT: Mr. Pratt.

25

1 CROSS EXAMINATION

2 BY MR. PRATT:

3 Q. You didn't prepare this inventory; did you?

4 A. I did not.

5 Q. You weren't involved in the preparation, at all?

6 A. I was not.

7 Q. Do you have -- you were only appointed as --
8 strike that. Have you even been appointed as personal
9 representative of your mother's estate yet?

10 A. Of my mother's estate?

11 Q. Yes.

12 A. I believe that I have.

13 Q. Do you know if the letters of administration have
14 actually been issued?

15 A. I do not know that.

16 Q. You haven't seen any letters of administration?

17 A. I'm not sure right now.

18 Q. Since your appointment, or there was an order
19 that was entered, what efforts have you made to
20 determine the value of your mother's estate?

21 A. Of my mother's estate?

22 Q. Exactly.

23 A. I have not done that.

24 Q. On what basis, if you haven't done any
25 investigation yourself, why would you say that this

1 \$25,000 estimate of the value of the estate is accurate?

2 A. Well, upon my father's death I had to have the
3 assets of the estate inventory that was done, so that
4 was the combination of my mother's estate and my
5 father's, at the time of his death. So based on that
6 valuation at that time, that number was within reason of
7 this number, so I think that we're talking within
8 generalities the numbers are approximates and were
9 pretty close to the numbers that were stated here.

10 Q. You're not serving as personal representative of
11 your father's estate; are you?

12 A. I am not.

13 Q. You're just talking about the \$25,000 value of
14 the household furnishings, and not whether or not
15 there's any other assets out there; is that right?

16 A. That's correct.

17 THE COURT: He was appointed September 24th
18 by the way.

19 MR. PRATT: Okay.

20 THE COURT: 2013.

21 MR. PRATT: I have no further questions.

22 THE COURT: You can step down.

23 THE WITNESS: Thanks.

24 THE COURT: You said you want to call
25 another witness?

1 MR. MANCERI: I like to call Mr. Spallina,
2 Your Honor.

3 THE COURT: Come up.

4 (Whereupon Mr. Spallina was sworn in by the
5 Court.)

6 DIRECT EXAMINATION

7 BY MR. MANCERI:

8 Q. Mr. Spallina, good afternoon. As you heard,
9 we've been asking questions about this inventory; are
10 you familiar with this document?

11 A. Yes. I am.

12 Q. Tell the Court how you're familiar with it.

13 A. This was the inventory that we filed in the
14 Shirley Bernstein estate, Your Honor.

15 Q. Were you one of the attorneys that represented
16 Simon as personal representative of the Estate of
17 Shirley Bernstein?

18 A. Yes. I was.

19 Q. And did you work with Simon Bernstein on creating
20 this inventory to be filed in the probate court?

21 A. Yes. I did.

22 Q. All right. Did you meet and speak with Simon in
23 furtherance of the preparation of this document?

24 A. Yes. We did.

25 Q. And that inventory reflects an estimated value of

1 \$25,000 comprised of furniture, furnishings, household
2 goods, and personal effects, do you see that?

3 A. Yes.

4 Q. Based on your dealings with Simon Bernstein, do
5 you have any information or knowledge which would in any
6 way contradict the value that's reflected on that
7 inventory?

8 A. No. I do not.

9 Q. Have you come to learn in the furtherance of the
10 administration of the estate of Simon Bernstein, because
11 you were one of the co-PR's of that estate; correct?

12 A. Yes.

13 Q. Is there any information that you learned in
14 furtherance of being the personal representative of
15 Simon's estate that the \$25,000 figure on this inventory
16 is inaccurate?

17 A. No. I have not. This was a reasonable estimate
18 of the estate.

19 Q. Now, did you or your firm handle the preparation
20 of the estate planning documents for Shirley Bernstein?

21 A. Yes. We did.

22 Q. And one of the documents we heard that Shirley
23 Bernstein had was what I'm going to call the Shirley
24 Bernstein trust. Do you know what I'm referring to?

25 A. Yes.

1 Q. Did you work with Shirley Bernstein in
2 furtherance of funding that trust while she was alive?

3 A. Yes. We did.

4 Q. To your knowledge, other than the assets that are
5 on this inventory, and excluding things that you know
6 would not be included, such as joint property and those
7 assets, were all of her material assets, to your
8 knowledge, funded into her trust before she died?

9 A. As far as we know, yes.

10 MR. MANCERI: I don't have any further
11 questions, Your Honor.

12 THE COURT: Mr. Pratt.

13 CROSS EXAMINATION

14 BY MR. PRATT:

15 Q. You said that you worked on preparing the
16 inventory in Shirley Bernstein's estate?

17 A. Yes.

18 Q. Can you tell me was that something that you
19 handled personally, or something that you delegated to
20 an assistant?

21 A. I called Simon, personally.

22 Q. But was there any efforts you made to contact
23 like say banks or third-parties to determine if there
24 was any other assets?

25 A. When we had a discussion about what to put on the

1 inventory, yes, and he said this was all there was to
2 put on the inventory.

3 Q. This inventory is based off of information that
4 you were given by Simon?

5 A. Correct.

6 Q. You basically took his word for it and didn't do
7 any investigation of your own; is that right?

8 A. That's correct.

9 MR. PRATT: I have no further questions.

10 THE COURT: So there's an inventory and you
11 are the PR of Simon, one of them.

12 THE WITNESS: Yes.

13 THE COURT: What's the status of his
14 estate?

15 THE WITNESS: His estate is pending.
16 There's litigation ongoing in the estate. We
17 have waited on distributing anything from the
18 estate due to the pending litigation, Your
19 Honor.

20 THE COURT: Okay. Did you file an
21 inventory in Simon's estate?

22 THE WITNESS: Yes, sir.

23 THE COURT: Has the inventory been
24 published?

25 THE WITNESS: I believe it has, Your Honor.

1 THE COURT: Do you have an inventory from
2 Simon's estate?

3 MR. PRATT: No. We don't.

4 THE COURT: Do you object to them having
5 it?

6 THE WITNESS: No.

7 THE COURT: Okay. I'm going to let you
8 have it, Elliott. Thank you.

9 THE COURT: All right. Thank you. You can
10 have a seat.

11 THE WITNESS: Thank you.

12 THE COURT: So technically the hearing
13 today was to deal with the improprieties of
14 the pleadings, meaning the prior waivers. I
15 heard a lit about this last time. I know you
16 brought in witness. Mr. Roth is here
17 obviously because of Ms. Moran's potential
18 difficulty, but I'm trying to think of putting
19 substance ahead of form to determine how it
20 benefits the estate to go into that issue any
21 further. So do you have a position on that
22 Mr. Pratt, now that Eliot has had a chance to
23 have the benefit of counsel and you've seen
24 the newest round of waivers. There is no
25 petition filed yet by Ted Bernstein. If he

1 files one and the estate for some reason is
2 not ready to be closed, or shouldn't be
3 closed, we can deal with that at that time.

4 You know, sometimes things happen and the
5 other side not having made a final decision on
6 this, what I heard was not good about what I
7 heard took place with respect to the
8 processing of these documents, the waivers
9 that the children signed and, essentially the
10 one that was signed purportedly by Simon, but
11 does it really matter, and I think I'd want it
12 to matter before more time and money and
13 energy is put into that, because if it's not
14 going to put money into anybody's pocket, what
15 good does it do just to tell Ms. Moran that
16 she did a bad thing. If that's the case, I
17 don't know that it is. I'm not finding that.

18 MR. PRATT: I'm not too concerned about the
19 validity of the waivers now that they've
20 signed new waivers and they filed them. What
21 We're trying to accomplish here is not to
22 throw anybody under the bus, or burn anybody.
23 We want a clear picture of what happened in
24 this entire estate plan, and the parent's
25 died --

1 THE COURT: I've got that, but Elliott is
2 entitled to that which anyone else in his
3 position is entitled to, no more no less, so
4 I'm not restricting, nor am I expanding on
5 this concept. There's laws that govern that
6 what he is entitled to. They're saying that,
7 you know, he's -- I mean, I don't know that
8 there's a formal request in Shirley's estate
9 for any other documentation other than that
10 which you now have, because there is nothing
11 else that is filed, and if what Ted says and
12 what Mr. Spallina says is true, if we
13 requested a final accounting we would get the
14 same things, and that's not going to get you
15 anywhere. That's what they said.

16 MR. PRATT: My concern is that we're not
17 going to be in a giant rush to close the
18 estate, not that we want to turn this --

19 THE COURT: There's no petition to close it
20 right now. Let's be patient and see what
21 happens and there may be reasons not to, or to
22 close it, depending what goes on elsewhere.
23 But given that, I don't even know other than
24 what we now see in the inventories, because
25 those are the two official documents, I don't

1 know anything else about what monies may have
2 passed through anyone's hands. But this isn't
3 a case of first impression. The law deals
4 with what potential beneficiaries are entitled
5 to and what they're not, and what trustees can
6 provide, and what not.

7 Let's be patient and do it in the correct
8 forum. It seems like a lot, and what you want
9 to accomplish is going to take place before
10 Judge French, or if you can take it back to
11 Judge Garrison.

12 MR. PRATT: Yea, I think you're right. We
13 want to make sure that this piece of the
14 puzzle is accurate, and if it is, you might
15 not ever see us again.

16 THE COURT: So they say she funded the
17 trust before her lifetime. Maybe she had some
18 assets that were jointly titled. Those are
19 not probate assets, they go just like people
20 want. She may have cash under the pillow and
21 it goes. So I'm going to take no further
22 action right now on the issue of alleged
23 impropriety or defects in the form of a
24 pleading or other documents submitted to the
25 court in furtherance of the closing of the

1 estate of Shirley Bernstein. I'm going to
2 reserve on attorney's fees and any other
3 possible sanction, if and when that matter
4 becoming ripe for me to determine, but not
5 today.

6 MR. MANCERI: Your Honor.

7 THE COURT: It may not Happen, at all.

8 MR. MANCERI: I want to address one thing
9 that you mentioned, so everyone knows. We
10 intend on filing a petition to close this
11 estate very quickly.

12 THE COURT: But I can't preempt that and
13 deal with that. We have to be patient and
14 follow the rule. When you file it, you're
15 going to make sure Elliott gets served. You
16 serve him, and he can do whatever he wants
17 with it. This is all rule driven.

18 MR. MANCERI: No question about it, Your
19 Honor. We have the original waivers. As you
20 know, we don't file the one's in ink anymore.
21 We have them if you want to take them in open
22 court.

23 THE COURT: No. E-files are good. You're
24 allowed to e-file.

25 MR. MANCERI: We'll rest with that. We

1 have a record.

2 THE COURT: I don't get files, you can
3 tell.

4 MR. MANCERI: We have them.

5 MR. ROTH: Can I just address the Court,
6 Judge, just to save some time in the future?

7 THE COURT: Sure.

8 MR. ROTH: I represent Kimberly Moran. She
9 has been charged by the state attorney's
10 office in a direct information with
11 improprieties regarding the notarization.
12 She's fully cooperated with the sheriff's
13 office. Just so you know so there's no
14 mystery here, she caused to be filed the
15 original waivers, which did not have a
16 notarization. This is pursuant to her
17 statement to the sheriff's office, it was her
18 understanding they did not need to be
19 notarized. Apparently Your Honor requires
20 them to be notarized. In order not to "get in
21 trouble" with Mr. Spallina and Mr. Tescher for
22 improperly filing unsworn and un-notarized
23 waivers, she stated to the sheriff's office
24 that she did that. She recognized what she
25 did was wrong. We surrendered her to the Palm

1 Beach Sheriff's office jail on Friday. If she
2 was called as a witness in this proceeding,
3 she would respectfully evoke her 5th Amendment
4 privilege.

5 THE COURT: That's one reason I had her to
6 stay outside and tried not to bring her in,
7 because we don't cross over things between
8 criminal and probate, and we were going to
9 leave it to another time and place.

10 MR. ROTH: She's a secretary that made a
11 poor choice of judgment apparently, based upon
12 what I've been told by the state attorney's
13 office and the detective that investigated the
14 case. I wanted you to be aware of that. It
15 would be a waste of time for her to subpoenaed
16 again, because she would evoke her privilege.

17 THE COURT: Okay. Mr. Pratt, I don't think
18 there's any doubt she's not going to testify
19 that she's here pursuant to a request to do
20 that. She has a 5th Amendment right and we're
21 going to stick to that. I don't know that
22 would benefit you anyway.

23 MR. PRATT: If she were to plead the 5th,
24 we could draw whatever conclusions we want to
25 from that. The ramifications of that, not

1 that I plan to subpoena her in the future, or
2 that I intend to question her about that, but
3 if she pleads the 5th in a civil case, then we
4 can draw whenever conclusions we want to
5 from --

6 THE COURT: You can draw adverse inferences
7 from her, but she's nobody. It's not going to
8 get you anywhere. Yes, I'll draw an adverse
9 inference, but then it gets you zero.

10 MR. PRATT: There's other ways to get it
11 in.

12 THE COURT: I don't think there's any doubt
13 about what happened. I'm aware of it. I just
14 don't like to make more trouble for people
15 that --

16 MR. PRATT: I don't intend to.

17 THE COURT: It's not warranted. I didn't
18 know she was charged. There's obviously
19 consequences that she's now charged with a
20 crime. So dealing with all that sounds to be
21 enough, so let's leave that barking dog alone
22 for right now and see where it gets everybody.
23 It reaffirms my internal position that I made
24 along with my case manager to require waivers
25 to be notarized. This will be the case

1 example, that bench bar, as to why it will
2 stay that way. We did it for a reason, not
3 with this case in mind, but it's important
4 now. We changed that rule soon after I got on
5 the bench here in probate, and this isn't the
6 only case where we had a problem with waivers
7 and challenges later on, so it's a good idea
8 to keep on doing that. No we just need to
9 make sure we notarize them correctly, but I
10 don't think that would be a problem.

11 Prepare the order that I indicated and
12 we'll be done for today. Thank you everyone.

13 (Whereupon the Hearing was concluded at
14 5:13 p.m.)

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, the undersigned authority, certify that the above Hearing was taken by me stenographically, and is a true and accurate transcription of my stenographic notes. Witness my hand and official seal this 6th day of December, 2013.

Michael Todd Berkowitz
Notary Public - State of Florida