

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

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**NOTICE OF FILING**

Petitioner, OPPENHEIMER TRUST COMPANY OF DELAWARE (“Oppenheimer”),  
as the resigned trustee of three irrevocable trusts created by the late Simon Bernstein for the  
benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein (the “Grandchildren  
Trusts”), hereby gives notice of filing the Guardian *Ad Litem*’s Response, Report and  
Recommendation with regard to Oppenheimer’s Petition for Instructions, Approval of Final

Accounting, Release and Discharge, a true copy of which is attached hereto as Exhibit "A." <sup>1</sup>

GUNSTER, YOAKLEY & STEWART, P.A.  
*Counsel for Petitioner*  
4855 Technology Way, Suite 630  
Boca Raton, FL 33431  
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By: /s/Steven A. Lessne  
Steven A. Lessne, Esq.  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 11<sup>th</sup> day of May, 2016.

/s/ Steven A. Lessne  
Steven A. Lessne

### **SERVICE LIST**

Diana Lewis  
ADR & Mediation Services, LLC  
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West Palm Beach, FL 33409  
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<sup>1</sup> The guardian *ad litem* does not have electronic filing privileges, and therefore, requested the assistance of Petitioner's counsel to file the attached report.

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

PROBATE DIVISION

CASE NO.: 2014CP002815 (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon  
Bernstein Irrevocable Trusts  
created for the benefit of  
Joshua, Jake and Daniel Bernstein,

Petitioner

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and  
natural guardians of JOSHUA, JAKE  
AND DANIEL BERNSTEIN, minors,

Respondents

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**GUARDIAN AD LITEM'S RESPONSE, REPORT AND RECOMMENDATION WITH  
REGARD TO OPPENHEIMER'S PETITION FOR INSTRUCTIONS, APPROVAL OF  
FINAL ACCOUNTING, RELEASE AND DISCHARGE**

COMES NOW Diana Lewis, court appointed Guardian *ad litem*  
(GAL) for Joshua, Jacob (sometimes referred to as "Jake") and  
Daniel Bernstein in the above styled case and states the  
following:

**BACKGROUND AND REPORT**

Upon being appointed by court order on April 4, 2016, the  
GAL reviewed numerous documents and pleadings pertinent to this  
case and companion cases. The GAL reviewed the accountings, back  
up documentation, prior Objections filed by Eliot Bernstein,

Exhibit "A"

spoke with the Petitioner's counsel, Steven Lessne, Oppenheimer Trust officer, Janet Craig and Oppenheimer CEO, Hunt Worth.

Petitioner, as the resigned trustee of the Simon Bernstein Trusts created on September 7, 2006 for the benefit of Joshua, Jacob and Daniel Bernstein ("Grandchildren Trusts"), petitioned the court for (i) instructions regarding the delivery of trust assets; and (ii) for approval of its accountings, together with a release and discharge. The Petition requests either termination of the Grandchildren Trusts and distribution of the trust assets to the parents of Joshua, Jacob and Daniel or the appointment of a successor trustee to receive the trust assets. According to the accountings, the trust assets are what would be considered "nominal" or "de minimus" by most Trust institutions. (As of 5/26/14 Petitioner reports that the Liquid Assets are as follows: Joshua - \$2195; Jacob - \$2120; Daniel - \$2188).

On February 26, 2015, following a "Status Check" hearing, the court ordered Eliot and Candice Bernstein ("Bernsteins") to designate a proposed successor corporate trustee. On the same day, the Bernsteins provided the names of three proposed corporate trustees to Petitioner's counsel. Thereafter, according to Petitioner's "Notice to Court That Respondents' Proposed Successor Trustees Have Declined the Appointment" filed on February 27, 2015, all three corporate trustees declined the appointment.

The Bernsteins then recommended an individual, JoAnne Denison, an Illinois attorney, as successor Trustee. However, it appears that the Bernsteins failed to provide the court with any written acceptance by Ms. Denison. In addition, the court was provided documentation from the Illinois Attorney Registration and Disciplinary Commission regarding Ms. Denison's disciplinary history which indicated that she was an inappropriate candidate. Mrs. Bernstein asked for additional time to find a suitable alternate trustee. The court granted the request. At the continued hearing on April 7, 2015, it appears that the Bernsteins failed to provide the court with an alternate trustee who was willing to serve. There appears to be no order entered from this hearing.

Since this hearing, there was an order entered on some, but not all of, Eliot Bernstein's objections to the Petitioner's accountings. In addition, there have been some filings by the

Petitioner of documents, notices and pleadings.

It is clear from the GAL's review of the documentation and investigation that the majority, if not all, of the payments from the "Grandchildren Trusts" were made at the request of the parents, Eliot and Candice Bernstein, for daily living expenses. It appears that Joshua, Jacob and Daniel Bernstein benefitted by being able to stay in the home and have all bills, including but not limited to, utility, Comcast, Verizon, Costco, Publix and repair bills, paid.

The GAL questioned a number of the entries in the accountings to confirm that they were for the benefit of Joshua, Jacob or Daniel. For example, the cell phone bill is in the name of "Ginger Ann Stanger" and redacted most of the time. However, the bill was for the Bernstein's address so it was assumed to be for the Bernsteins. There also was a large electrical repair bill which was questioned. GAL was advised that the homeowner's insurance required the replacement of the exterior circuit breaker. GAL was advised that the Petitioner last paid property taxes in December, 2012. From a review of the Palm Beach County Tax Collector's website, it appears that property taxes are delinquent. There were many more entries questioned by the GAL, for which adequate responses were provided. Based upon all of the information GAL was provided, the GAL overwhelmingly concludes that it is in the best interest of Joshua, Jacob and Daniel that this case come to an end and the trust property distributed.

#### **RESPONSE TO PETITION**

COMES NOW the GAL, on behalf of Joshua, Jacob and Daniel Bernstein, and files her response to the Petition filed June 11, 2014 and states as follows in the numerical order of the paragraphs in the Petition:

1. Upon information and belief, the statements are admitted.
2. Upon information and belief, the statement is admitted.

3. Upon information and belief, the allegations are Admitted.
4. Upon information and belief, the allegations are admitted.
5. The GAL can neither admit or deny the statement. GAL is aware that there is some controversy.
6. The GAL can neither admit or deny the statement but is aware that Petitioner received funds and in kind assets from Stanford Trust Company.
7. The GAL can neither admit nor deny the allegations.
8. Upon information and belief, the allegations are admitted.
9. Upon information and belief, the allegations are admitted.
10. Upon information and belief, the allegations are admitted.
11. Upon information and belief, the allegations with regard to the content of the letter is admitted. As to the next allegation, GAL lacks sufficient information or knowledge as to whether they "declined to do so".
12. As to the allegations regarding the relief requested, they are admitted.
13. As to the statements regarding the provisions of the Trusts, they are admitted.
14. As to the statement regarding the statute, it is admitted.
15. As to the statement regarding the statute, it is admitted.

16. As to the allegations regarding the statute, it is admitted.
17. GAL reincorporates her responses to paragraphs 1 through 16 in response to paragraph 17.
18. As to the allegations, they are admitted.
19. As to the allegations, they are admitted but it is denied that those are the only options for the court.
20. GAL reincorporates her responses to paragraphs 1 through 16 in response to paragraph 20.
21. As to the allegations and requests for relief, GAL is unable to admit or deny the allegations or requests for relief.
22. As to the request for attorneys' fees and costs, GAL would request that the court deny Petitioner's request.

#### **RECOMMENDATION**

Based upon the GAL's review of the Grandchildren Trusts, the accountings, as amended and supplemented and the backup documentation produced by Petitioner, GAL recommends that the court terminate the Grandchildren Trusts. It is also recommended that the Trust assets be given to the parents of Joshua, Jacob and Daniel Bernstein, Eliot and Candice Bernstein, for the use and benefit of their children or that the remaining Trust assets be used to partially pay off delinquent property taxes.

It is also recommended that the court accept and approve the accountings for the Grandchildren Trusts, as supplemented and amended.

Further, it is recommended that any and all interests that the minor beneficiaries may hold in Bernstein Family Realty, LLC and/or LIC Holdings (which has been administratively closed due to failure to file annual reports) be conveyed or assigned to Eliot and Candice Bernstein, as parents and natural guardians of the minor beneficiaries.

Respectfully submitted this 9th day of May, 2016.

/s/Diana Lewis  
Diana Lewis  
FBN 351350  
MN 32461 R  
ADR & Mediation Services, LLC  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017

Copy provided to:

Steven A. Lessne  
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Courtesy copy to:

Eliot and Candice Bernstein  
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