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August 11, 2017

The Honorable Rosemarie Scher
North County Courthouse
3188 PGA Boulevard, Room 2728
Palm Beach Gardens, FL 33410

Re: *Ted Bernstein, as Trustee v. Alexandra Bernstein, et al.*
Case No.: 502014CP003698XXXXNBIH
UMC Hearing on August 22, 2017 at 8:30 a.m.

Dear Judge Scher:

In connection with the UMC Hearing scheduled August 22, 2017 at 8:30 a.m., enclosed are courtesy copies of the following:

1. Successor Trustee's *Response in Opposition to Stansbury's Amended Motion to Specially Sequence Hearings, Including Request to Expedite Approval Hearing, and Request to Strike Stansbury's Improper Motion and Any Hearing on DE 533*;
2. Notice of Hearing for August 22, 2017, on Successor Trustee's, Ted S. Bernstein, *Motion to Continue Hearing Scheduled for October 27, 2017 at 1:30 p.m.*;
3. Successor Trustee's *Motion to Continue Hearing Scheduled for October 27, 2017 at 1:30 p.m.*; and
4. Court's *Order Setting Hearings*, dated July 24, 2017.

Thank you for your consideration on the foregoing. We appreciate Your Honor's time and attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alan B. Rose', is written over a vertical line that extends from the signature down to the typed name below.

Alan B. Rose

cc: All parties on attached service list (enclosures previously provided)

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

CASE NO. 502012CP004391XXXXNBIH
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____/

**TRUSTEES RESPONSE IN OPPOSITION TO STANSBURY'S AMENDED
MOTION TO SPECIALLY SEQUENCE HEARINGS, INCLUDING REQUEST TO
EXPEDITE APPROVAL HEARING, AND REQUEST TO STRIKE
STANSBURY'S IMPROPER MOTION AND ANY HEARING ON DE 533**

Trustee, Ted S. Bernstein ("Trustee"), files his Response in Opposition to Stansbury's *Amended Motion to Specially Sequence Hearings* set for UMC on August 22, 2017, and requests this Court Strike any Hearing set on Stansbury's Request for Court Intervention Under Section 736.0706(1) (D.E. 533), and states:

Summary of Positions and Relief Sought

1. On February 15, 2017, potential claimant in the Estate, William Stansbury ("Stansbury"), mailed this Court a copy of the Request for Court Intervention under Section 736.0706(1), Fla. Stat. [D.E. 533] and a proposed Order Setting Hearing on that Motion.

2. Stansbury, through section 736.0706(1), Fla. Stat. seeks to remove Trustee. This fails for three reasons. First, Stansbury lacks standing to remove the Trustee – **an issue already decided in this case**. See DE 244 "(Stansbury is a claimant to Decedent's Estate. He is not a beneficiary and thus lacks standing to bring an action for removal of Trustee. F.S. 736.0706(1)". This latest request simply is an attempted backdoor to get around this Court prior – and correct – ruling.

3. Second, none of the parties who have standing to remove Trustee desire to remove Trustee. To the contrary, everyone with standing has ratified Ted's appointment and/or requested the Court appoint Ted as provided in their Settlement Agreement dated November 2, 2016 (still awaiting court approval). The parties to the agreement include all trustees and the guardian ad litem, representing the ten trusts which are beneficiaries of the Simon Trust.

4. Third, Stansbury's Request for Court Intervention under Section 736.0706(1), Fla. Stat. is counterintuitive to all common sense. It is inappropriate to move the court to do something "on its own initiative." Upon the request, it is no longer on the Court's own initiative. Given Stansbury's lack of standing and the agreement by the people with standing, there is no reason for this Court should consider Stansbury's Request for Court Intervention. The Request and any hearing should be stricken.

5. Finally, as to the sequencing of hearings, the Illinois settlement approval should be heard first, and soon, to prevent undue delay in that trial awaiting this Court's approval. Stansbury has advised the PR he takes no position on the settlement. Eliot has no standing as beneficiary of the Simon Trust, and only a tiny interest in the Estate. Thus, the approval could occur at UMC or a short special set hearing. Eliot should not longer be allowed to derail these proceedings and exponentially increase the fiduciaries' legal fees.

Argument

Section 736.0706(1), Fla. Stat. reads, "The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, **or a trustee may be removed by the court's own initiative.**" Stansbury is not a settlor, cotrustee or beneficiary, and he already has tried and failed to remove Ted as Trustee. (See DE 244, as explained in ¶2 above)

Stansbury lacks standing to remove Trustee under section 736.0706(1) Fla. Stat. Additionally, none of the parties listed in section 736.0706(1) seek to remove Trustee. The settlor is deceased, there are no co-trustees, and none of the beneficiaries seek to remove Trustee. All beneficiaries agree that Trustee is acting in their best interest and should continue to serve as trustee.

Recognizing that he lacks standing to remove Trustee, Stansbury improperly requests this Court remove Trustee "on its own initiative" as stated in Section 736.0706(1). Common sense says that Stansbury cannot request this Court to "act on its own initiative." Oxford Dictionary defines "on one's own initiative" as "without being prompted by others."

Stansbury's request for this Court to act is prompting this Court to act. Section 736.0706(1) clearly lists parties who can request the court to remove a trustee. Stansbury cannot circumvent this statute by requesting this Court to act on its own initiative. If such were the case, anyone could request that the court act on its own initiative to remove a trustee, and there would be no purpose for listing the individuals with standing to remove a trustee.

Trawick, Fla. Prac. & Proc. § 9:1 states, "The court acts on its own initiative by taking some action, but no motion is made or filed." *Trawick, Fla. Prac. & Proc. § 9:1* (2016-2017 ed.). "Motions are used to obtain court action." *Id.* Stansbury's Request for Court Intervention is really a motion because the "request" seeks the court to act and remove Trustee.

WHEREFORE, Trustee requests that this Court: deny Stansbury's Amended Motion for Sequencing Hearings; strike the Request for Court Intervention [DE 533]; strike any hearing set on that Request; set the Illinois approval hearing as soon as practical within the Court's schedule; and grant such other relief this Court deems appropriate.

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 8th day of August, 2017.

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

IN RE: CASE NO. 502012CP004391XXXXNBIH
CP - Probate
ESTATE OF SIMON L. BERNSTEIN,

NOTICE OF HEARING
Uniform Motion Calendar

YOU ARE HEREBY NOTIFIED that the undersigned has called up for a hearing on the following:

DATE: Tuesday, August 22, 2017

TIME: 8:30 a.m.

JUDGE: Honorable Rosemarie Scher

PLACE: Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 4, Palm Beach Gardens, FL 33410

MATTER(S) TO BE HEARD:

- 1. Movant, Ted S. Bernstein, Successor Trustee of the Simon Bernstein Trust, Motion to Continue Hearing Scheduled for October 27, 2017 at 1:30 p.m.**

_____ *Movant's attorney has spoken in person or by telephone with the attorney(s) for all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.*

X *Movant's attorney has attempted to speak in person or by telephone with the attorneys(s) for all parties who may be affected by the relief sought in the motion.*

X *One or more of the parties who may be affected by the motion are self represented.*

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 11th day of August, 2017.

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Alan B. Rose (Fla. Bar No. 961825)

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"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

SPANISH

Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.

CREOLE

Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Tammy Anton, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.

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

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

**MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF
THE SIMON BERNSTEIN TRUST, MOTION TO CONTINUE
HEARING SCHEDULED FOR OCTOBER 27, 2017**

Movant, Ted S. Bernstein, Successor Trustee of the Simon Bernstein Trust, moves to continue the hearing scheduled on October 27, 2017 at 1:30 p.m. and states:

1. On July 24, 2017, the Court entered an Order Setting Hearings, scheduling *Trustee's Motion to Approve Compromise and Settlement*, (ii) *Appoint a Trustee for the Trusts Created for D.B., JA.B., and (iii) Determine Compensation for Guardian Ad Litem (D.E. #497) and Motion in Opposition (D.E. #504)* to be heard on Friday, October 27, 2017, at 1:30 p.m.

2. Undersigned counsel is out of state on that date and unavailable.

WHEREFORE, Successor Trustee, Ted S. Bernstein, respectfully requests that this Court grant this request and continue the hearing presently scheduled for October 27, 2017, at 1:30 p.m.

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; Email Electronic Transmission; FedEx; Hand Delivery this 8th day of August, 2017.

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIVISION "IH"

Case No. 50 2012-CP-4391 XXXX NB

IN RE: THE ESTATE OF:
SIMON BERNSTEIN,
Deceased.

ORDER SETTING HEARINGS

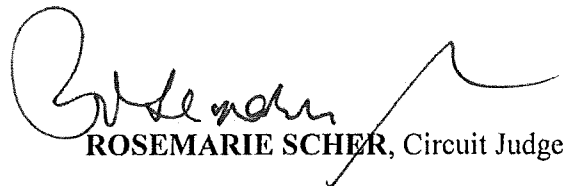
THIS MATTER came before the Court for scheduling on the following matter:

1. Trustee's Motion to Approve Compromise and Settlement, (ii) Appoint a Trustee for the Trusts Created for D.B., JA.B., and (iii) Determine Compensation for Guardian Ad Litem (D.E. #497) and Motion in Opposition (D.E. #504) shall be heard **FRIDAY, OCTOBER 27, 2017 AT 1:30 p.m.** in Courtroom 4, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410.
2. Brian M. O'Connell's Verified Motion for Approval of Settlement Agreement Entered in Illinois Federal Action (D.E. #673) shall be heard **WEDNESDAY, NOVEMBER 15, 2017 AT 9:30 a.m.** in Courtroom 4, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410.

Parties are directed to follow the previous Orders of the Court establishing procedure for the above set hearings.

NO OTHER MATTERS WILL BE HEARD ABSENT COURT APPROVAL.

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida this 24
day of July, 2017.


ROSEMARIE SCHER, Circuit Judge

Copies furnished:
Attached Service List

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