

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

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**ORDER ON PLAINTIFF, TED S. BERNSTEIN'S MOTION TO MODIFY
ORDER DATED MAY 22, 2017; TO DIRECT PAYMENT FOR BENEFIT
OF ELIOT'S CHILDREN TO COURT REGISTRY; AND TO DETERMINE
COMPENSATION FOR GUARDIAN AD LITEM AND DISCHARGE GUARDIAN**

THIS CAUSE came before the Court on November 15, 2017 on Ted Bernstein's *Motion to Modify Order Dated May 22, 2017 etc.* ("the Motion"). The Court, having reviewed the Motion and the record, and having been otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Motion is GRANTED, such that the settlement previously approved by Order dated May 22, 2017, is modified as set forth in this Order.

2. One of the issues now before the Court is the selection of a trustee to serve in place of Eliot Bernstein in connection with the three Eliot Children Trusts created under the Simon L. Bernstein Amended and Restated Trust Agreement dated 7-25-12 ("Simon's Trust"), for the ultimate benefit of D.B, Ja. B and Jo. B ("Eliot's Children").

3. In connection with the same issue being decided by this Court in the Simon Bernstein Estate Matter, Case No. 2012CA004391XXXXNBIH ("Simon's Estate"), the Court heard evidence and argument, and separately made rulings on these same issues raised in this Motion. Based on the rulings made in Simon's Estate matter, the Court hereby makes the same rulings in this case for the same reasons, as follows below.

4. Based upon the evidence addressed in the Simon Trust order, and because this Court already has determined (i) Eliot Bernstein's actions were adverse and destructive to his children's interest (in connection with appointment the Guardian Ad Litem), and (ii) it will be difficult or impossible to find a replacement Trustee, the Court reluctantly directs all funds from the Shirley Bernstein Trust to be paid for the benefit of Eliot's Children shall be deposited into the Registry of the Court, under the terms and conditions set forth in this Order.

5. The Court-awarded fees and costs to the GAL were determined in the Simon Estate Order and apply equally here. Such compensation will be paid before the distribution of any funds into the Registry. The Court directs the Trustee to pay such fees directly to the GAL.

6. Any and all funds which would otherwise be paid into the Eliot Children's Trust, as defined in the Settlement Agreement or any other agreement (including any settlement proceeds

from the Illinois insurance litigation), will be deposited or paid into the Registry of the Court, separately for the benefit of each of Eliot's Children, and such funds will be released under the following conditions:

- a. if the Court at any time appoints a successor trustee for any or all of the Eliot Children's Trust, all funds held in the Registry of the Court will be released to such trustee, to hold in an appropriate trust account solely for the benefit of Eliot's Children, consistent with the terms of Simon's Trust (the relevant parts of which are attached as Exhibit A).
- b. if no successor trustee has yet been appointed and any of Eliot's Children requests a distribution consistent with the terms of Simon's Trust, such child could seek such distribution by filing a motion with the Court. Upon the filing of any such motion, this Court will consider such request in light of the terms of Simon's Trust, and will direct the Clerk to release such funds as this Court deems appropriate under the circumstances; and
- c. upon each child reaching the age of 35, each such child is entitled to seek the immediate release of all remaining funds held by the Clerk of the Court, upon motion and order.

7. By entry of this order which resolves the need for a new trustee, and upon the entry of orders approving all of the pending settlement agreements involving the GAL, the GAL shall be discharged and her reasonable hourly rate and compensation shall be split equally between the three Eliot Children's Trust.

8. For the reasons set forth in the Simon Estate Order, based upon the GAL's background, her time and expense records and her testimony, the Court determined the reasonable compensation of the GAL. The amount awarded in the Simon Estate Order covered all matters,

including this one, and if needed, the Court would have entered the same award in this case. The amount awarded shall be paid by the Trustee from the funds available for the distributions to Eliot's Children, split 1/3 each.

DONE AND ORDERED in Chambers, North County Courthouse on _____, 2017.

HONORABLE ROSEMARIE SCHER

cc: All parties on the attached service list

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