

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.: 502014CP003698XXXXNBIJ

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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**PLAINTIFF'S MOTION TO (i) APPROVE COMPROMISE AND SETTLEMENT,
(ii) APPOINT A TRUSTEE FOR THE TRUSTS CREATED FOR D.B., JA.B. AND JO.B,
AND (iii) DETERMINE COMPENSATION FOR GUARDIAN AD LITEM**

Plaintiff, Ted S. Bernstein (the "Trustee"), moves the Court to approve the parties' settlement reached at mediation held on July 25, 2016; to appoint a Trustee for the three trusts created for Eliot Bernstein's children (and thereafter, to discharge the Guardian); and to determine the Guardian Ad Litem's fees, states:

1. On July 25, 2016, a mediation was conducted to address numerous issue involving this case and the related matters involving Simon Bernstein.

2. In connection with the issues raised in the Amended Complaint filed in this action, the parties reached a full and complete settlement. The settlement resolves all claims raised in Count I. Because the Court previously entered a Final Judgment on Count II and dismissed the counterclaim filed by Eliot Bernstein, that would fully resolve this case other than the enforcement and implementation of the settlement, and the compensation and discharge of the Guardian.

3. Specifically, the settlement:

a. resolves all questions concerning the validity and terms of The Shirley Bernstein Trust;

b. agrees that trusts were created for each of Simon and Shirley Bernstein's ten grandchildren, and that each of those ten trusts will receive equal an distribution of Trust assets;

c. resolves all claims by and between the beneficiaries, significantly including a release of any claims of surcharge to be brought by certain beneficiaries concerning the conduct of Eliot Bernstein, which was not only adverse and destructive to the interests of his children, but was adverse and destructive to the interests of all ten grandchildren; and

d. accepts a summary accounting provided by the Trustee in lieu of a formal and expensive full accounting, including approval of the expenses, legal costs, and professional fees incurred in the administration of the Trust.

4. The settlement is effectively immediately, and contingent only upon the affirmance by the Fourth District Court of Appeal of the pending appeals by Eliot Bernstein.

5. The Trustee and each of the parties to the settlement agreement believe that the settlement is in the best interests of the Trust and its beneficiaries.

6. The Guardian *Ad Litem* appointed by this Court to represent the interests of Eliot Bernstein's children, each of whom is a beneficiary of a trust created under the Bernstein testamentary documents, agrees that the settlement is in the best interests of Eliot Bernstein's children. As part of this Motion, the Trustee requests that the Court determine and/or approve an hourly rate for the Guardian and approve an award to the Guardian, to be made in accordance with the prior order appointing the Guardian.

7. Finally, the Trustee requests the Court appoint a Trustee for the three trusts created for Eliot's children, as follows:

Trust created for the benefit of Joshua Bernstein under the Simon L. Bernstein Trust
dtd 07-25-2012 (EIN: XX-XXXXXXX)

Trust created for the benefit of Daniel Bernstein under the Simon L. Bernstein Trust
dtd 07-25-2012 (EIN: XX-XXXXXXX)

Trust created for the benefit of Jake Bernstein under the Simon L. Bernstein Trust dtd
07-24-2012 (EIN: XX-XXXXXXX)

(the "Eliot Children Trusts")

8. Each of the Eliot Children Trusts already exists, and has a federal tax identification number assigned to it. None of the children can serve as trustee, and none has an individual right to possess money. Instead, under Simon's Trust, all monies go into the Eliot Children Trusts, and Eliot is supposed to serve as trustee. However, back in 2013, Eliot failed and refused to open and account or accept distribution. And since then, his actions have been adverse and destructive to his children. Neither the Trustee nor the Guardian believe Eliot or Candice Bernstein should serve as trustee of the Eliot Children Trusts.

9. Moreover, the Guardian is not willing to serve in the capacity as permanent trustee of the Eliot Children Trusts, once they are funded as part of the settlement. Neither the Trustee nor the Guardian believe any institution would serve as trustee, given the limited size of the trusts and the history of persons dealing with Eliot Bernstein, including the recent struggle of Oppenheimer to resign. It is not anticipated that the Eliot Children Trusts will be funded for at least six months, until the appeal is resolved.

10. Accordingly, the Trustee and the Guardian request that the Court retain jurisdiction to select and appoint a trustee to serve as trustee for the Eliot Children Trusts. To the extent a suitable trustee cannot be located, the Court may need to take further action with respect to these trusts.

11. Ted Bernstein, who already serves as Successor Trustee of Simon's and Shirley's Trusts, as well as the three trusts created by Simon for his own children, would be willing to serve in the role of trustee of the Eliot Children Trusts, for no fee whatsoever. Ted Bernstein does not believe anyone else would be willing to undertake this role. Further, he understands and acknowledges that he would only be fulfilling the wishes of his parents in protecting his three nephews. Ted Bernstein firmly believes that if these funds are simply given outright to Eliot Bernstein, he will use them for his own purposes. Moreover, Ted Bernstein already has demonstrated a willingness to stand up to Eliot Bernstein and not back down notwithstanding brutal and vicious internet attacks by Eliot Bernstein. Unlike a newcomer, there is little more Eliot could falsely publish about Ted Bernstein that already has not been falsely published. However, Ted Bernstein has no desire to serve in that capacity, unless Eliot and Candice Bernstein would consent.

12. To the extent the Court chooses a trustee, such person needs to agree to use the trust funds for the benefit of Eliot's Children, not for Eliot's benefit or to fund Eliot's crusade for justice.

WHEREFORE, Trustee requests that the Court grant this motion, approve the settlement, determine compensation for the Guardian, and thereafter dismiss this case, retaining jurisdiction solely to enforce the settlement agreement and address implementation issues concerning the Guardian and the appointment of a trustee for Eliot Bernstein's children's trusts.

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 7th day of November, 2016.

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