

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup>  
JUDICIAL CIRCUIT OF FLORIDA, IN  
AND FOR PALM BEACH COUNTY

PROBATE DIVISION

FILE NO.: 502012CP004391XXXXNB IH

---

IN RE: ESTATE OF

SIMON L. BERNSTEIN,

Deceased.

---

**RESPONSE TO MOTION FOR ORDER TO SHOW CAUSE**

COMES NOW, BRIAN M. O'CONNELL, ESQ., as Successor Personal Representative of the Estate of Simon L. Bernstein ("Mr. O'Connell"), and hereby responds to the Motion for Order to Show Cause, filed herein by Ciklin Lubitz on or about September 19, 2018, and in support thereof states as follows:

1. On or about April 27, 2018, this Court entered three (3) orders directing Brian M. O'Connell, Esquire, as Successor Personal Representative of the Estate of Simon L. Bernstein, to pay a total of \$51,267.10 to Ciklin Lubitz, formerly known as Ciklin Lubitz & O'Connell ("Ciklin Lubitz"), for personal representative fees and costs and the personal representative's attorney's fees and costs incurred in the above – captioned proceeding.
2. On or about September 19, 2018, Ciklin Lubitz filed Motion for Order to Show Cause requesting this Court order Mr. O'Connell, Esquire to "show cause in writing as to why he has not complied with the three orders."
3. Accordingly, Mr. O'Connell responds as follows:

4. Mr. O'Connell has not purposefully chosen to delay or not remit payment pursuant to the Order.

5. There is a pending dispute based on contractual and equitable principles wherein Brian M. O'Connell's P.A. has various claims to Mr. O'Connell's accounts receivables, including this matter.

6. Despite Mr. O'Connell's P.A. being owed monies from such accounts receivable, Ciklin Lubitz has refused to even agree that Mr. O'Connell's PA is due any amount from any account receivable.

7. Since the date of Mr. O'Connell's resignation, on May 9, 2018, Ciklin Lubitz and Mr. O'Connell have engaged in both informal settlement negotiations and have attended a formal mediation regarding accounts receivable, among other things.

8. In this case, Mr. O'Connell, as the Personal Representative of the Estate, has a clear understanding of the above-described dispute, however, any prudent fiduciary who was made aware of such disputes would not remit payment at this time.

9. To the extent this Court finds payment should be made at this time pursuant to the Order, the prudent course of action given the above is for such monies to be paid into the Court Registry or to a neutral, third – party in escrow.

WHEREFORE, BRIAN M. O'CONNELL, ESQ., as Successor Personal Representative of the Estate of Simon L. Bernstein, respectfully requests this Court deny the Motion for Order to Show Cause, for the reasons set forth herein, or, in the alternative, direct such monies to be paid into the Court Registry or to a neutral third – party in escrow, together with any further relief deemed just and proper by this Court.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service via the Court's e-portal or U.S. Postal Service to Counsel and Parties of record listed on the attached Service List this 24<sup>th</sup> day of September, 2018.

/s/ Ashley Crispin Ackal

BRIAN M. O'CONNELL/FBN: 308471  
ASHLEY CRISPIN ACKAL/FBN: 37495  
JOIELLE A. FOGLIETTA/FBN : 94238  
CLARA CRABTREE CIADELLA/FBN : 106323  
O'CONNELL & CRISPIN ACKAL, PLLC  
420 Royal Palm Way  
Suite 300  
Palm Beach, Florida 33480  
Telephone: (561)355-0403  
Fax: (561)355-5133  
Primary e-mail address: [service@OCAlawyers.com](mailto:service@OCAlawyers.com)  
Secondary e-mail address:  
[secondaryservice@OCAlawyers.com](mailto:secondaryservice@OCAlawyers.com)

### **SERVICE LIST**

Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a>	John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>	Diana Lewis obo Jacob and Daniel Bernstein. ADR & Mediation Services, LLC 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 <a href="mailto:dzlewis@aol.com">dzlewis@aol.com</a>
---	---	--

<p>Peter Feaman, Esq.  Peter M. Feaman, P.A.  3695 Boynton Beach Blvd., Suite 9  Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p>	<p>Shendell &amp; Pollock, P.L.  2700 N. Military Trail, suite 150  Boca Raton, FL 33431  241-2323 Fax: 241-2330  Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>  Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>  Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p>	<p>Max Friedstein  2142 Churchill Lane  Highland Park, IL 60035</p>
<p>Eliot Bernstein  2753 N.W. 34<sup>th</sup> St.  Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon  950 N. Michigan Ave., Apt. 2603  Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and  Carley Friedstein, Minor  c/o Jeffrey and Lisa  Friedstein  Parent and Natural Guardian  2142 Churchill Lane  Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p>
<p>Jill Iantoni and  Julia Iantoni, a Minor  c/o Guy and Jill Iantoni,  her Parents &amp; Natural  Guardians  2101 Magnolia Lane  Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p>	<p>Paul D. Turner, Esq.  Christopher T. Perré  Perlman, Bajandas, Yevoli &amp;  Albright, P.L.  200 South Andrews Avenue,  Suite 600  Fort Lauderdale, FL 33301  Tel.: 954/566-7117  Fax: 954/566-7115  <a href="mailto:pturner@pbyalaw.com">pturner@pbyalaw.com</a>  <a href="mailto:cperre@pbyalaw.com">cperre@pbyalaw.com</a>  <a href="mailto:eservice@pbyalaw.com">eservice@pbyalaw.com</a></p>
<p>Marc J. Soss, Esq.  11010 Hyacinth Place  Lakewood Ranch, FL  34202-4158  Tel.: 941/928-0310  Fax: 813/342-7967</p>	<p>Jeffrey Garber, Esq.  Ciklin Lubitz  515 N. Flagler Drive, 20<sup>th</sup> Floor  West Palm Beach, FL 33401</p>	<p>Brett C. Barner, Esq/  Barner &amp; Barner, P.A.  11360 Jog Road, Suite 104,  Palm Beach Gardens, FL  33418  <a href="mailto:service@barnerlaw.com">service@barnerlaw.com</a>  <a href="mailto:bbarner@barnerlaw.com">bbarner@barnerlaw.com</a></p>

<a href="mailto:mjs@fl-estateplanning.com">mjs@fl-estateplanning.com</a>		<a href="mailto:bhenry@barnerlaw.com">bhenry@barnerlaw.com</a>
--	--	--