

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: GUARDIANSHIP OF

LEON BLOOM,

Case Nos.: 2014-GA-003747-NC

ORDER DIRECTING MARC J. SOSS TO RETURN FUNDS TO TRUST

THIS CAUSE came on for hearing before the Court on September 12, 2018, upon the Supplemental Motion for Order Compelling Return of Funds Converted from Trust, filed on March 20, 2018, and the previously filed Amended Motion for Order Compelling Return of Funds Converted from Trust (collectively, the "Motion"), both filed by Marshall Bloom, together with the Trustee's Notice of Joinder in the Motion, to compel Marc J. Soss to return monies to the Leon Bloom Revocable Living Trust u/a/d 11/18/1988, as Restated (the "Trust"). On the aforementioned date, the Court heard testimony, received deposition testimony and other documents into evidence, and heard arguments of counsel. Based on the foregoing, the Court makes the following

**FINDINGS OF FACT:**

1. The Court's findings of fact were read into the record in open court on September 12, 2018. The transcript of the Court's findings is attached hereto as Exhibit "A" and incorporated herein by reference.
2. The Trustee of the Trust, Robert M. Elliott, stipulated in open court that a reasonable fee for Marc J. Soss rendered in Appeal No.: 2D16-4185, which was the subject of an Order from the District Court of Appeal awarding entitlement to attorney's fees was \$7,350.00, plus costs in the amount of \$50.50 for a total of \$7,400.50. As

referenced in the transcript attached hereto, Marc Soss shall receive a credit in that amount against the \$25,360.00 Marc Soss removed from the Trust when he was the putative trustee. This leaves a balance due and owing to the Trust from Marc J. Soss of \$17,959.50.

Accordingly, based on the foregoing, it is hereby

**ORDERED AND ADJUDGED**, as follows:

1. The Motion is granted, in part. Marc J. Soss, 11010 Hyacinth Place, Lakewood Ranch, FL 34202, is hereby ordered to return to Robert M. Elliott, Trustee of the Trust, the sum of SEVENTEEN THOUSAND NINE HUNDRED FIFTY-NINE DOLLARS AND FIFTY CENTS (\$17,959.50) U.S. Funds.

2. Repayment of this amount shall be made within 90 days of the date of this Order.

3. The Court declines to order the payment of interest on the aforesaid amount.

4. Any and all other relief requested in the Motion is denied.

**DONE AND ORDERED** in Sarasota County, Florida, on this 3 day of

October, 2018.

  
HONORABLE FREDERICK P. MERCURIO  
CIRCUIT COURT JUDGE

Copies to:

James L. Essenson, Esquire, 2071 Main Street, Sarasota, FL 34237  
Marc J. Soss, Esquire, P.O. Box 110127, Lakewood Ranch, FL 34211  
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1 IN THE CIRCUIT COURT OF SARASOTA COUNTY, FLORIDA

2 PROBATE DIVISION

3 File Number: 2014 GA 003747 NC

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6 IN RE: GUARDIANSHIP OF

7 LEON BLOOM

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11 TRANSCRIPT OF PROCEEDINGS

12 BEFORE: The Honorable Frederick P. Mercurio

13 PLACE: Lynn N. Silvertooth Judicial Center  
14 2002 Ringling Boulevard  
Sarasota, Florida 34237

15 DATE: September 12, 2018  
Commencing at 9:00 a.m.

16 PLACE: Lynn N. Silvertooth Judicial Center  
17 2002 Ringling Boulevard  
Sarasota, Florida 34237

18

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21 REPORTER: Nancy Anne Flynn, RPR  
22 Notary Public  
State of Florida

23

24

Exhibit "A"

25

ASSOCIATED COURT REPORTING OF SOUTHWEST FLORIDA  
(941) 951-1560

## 1 APPEARANCES:

## 2 ATTORNEYS FOR DOROTHY BLOOM:

3

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11 and  
12 ALLAN BAILEY, ESQUIRE

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## 14 ATTORNEYS FOR MARSHALL BLOOM:

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## 16 ALSO PRESENT:

17 THERESA HALL, Paralegal

18 ROBERT ELLIOT, Trustee

19 G. LOGAN ELLIOT, ESQUIRE.  
20 Counsel for trustee Rob Elliot

21

22 JACK HAWKINS, ESQUIRE  
23 Counsel for trustee Rob Elliot

24

25

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1           then having someone object to it.

2           Thank you, your Honor.

3           THE COURT: Mr. Essenson?

4           MR. ESSENSON: I think that said it all.

5                                   RULING

6           THE COURT: As to that supplemental motion  
7           filed on March 20, 2018, I have heard argument  
8           and testimony and evidence, and I will make the  
9           following finding.

10           On July 22, 2015, there is a written order  
11           from Judge Charles Williams who was at that  
12           time the presiding judge in this matter, and in  
13           that order he approved the resignation of  
14           Caldwell Trust as a successor trustee.  
15           Parenthetically, in a handwritten note below  
16           his signature, but evidenced by his initials,  
17           Judge Williams wrote: "A successor trustee  
18           shall be presented for appointment by the end  
19           of the business day of July 23, 2015, and  
20           Robert Johnson is an interested party for  
21           purpose of notice and objection to the  
22           successor trustee."

23           The transcript of the hearing before Judge  
24           Williams indicates on page eleven that Judge  
25           Williams indicated he would allow Mr. Soss's

1 client to go ahead and select a successor  
2 trustee, reserving on sny potential objection  
3 by any of the interested parties, and he would  
4 find that Mr. Essenson's client, Mr. Johnson,  
5 was -- Ms. Walter's client, she was the one at  
6 the hearing, was an interested party under the  
7 global settlement agreement.

8 The very next day, July 23, 2015, there's  
9 an appointment of a successor trustee signed by  
10 Dorothy Bloom appointing Mr. Soss as a  
11 successor trustee. There's nothing in the  
12 court file to indicate that the successor  
13 trustee was ever presented for appointment by  
14 the Court, no court order appointing Mr. Soss  
15 as a successor trustee or approving the  
16 appointment of Mr. Soss as the successor  
17 trustee; that within six calendar days,  
18 July 29, 2015, there's an objection to the  
19 notice of appointment of a successor co-trustee  
20 Mark Soss, filed by Mr. Johnson; that in  
21 response to that, Mr. Soss filed on August  
22 11th, 2015, a Motion to Strike Objection and  
23 Response Thereto in the Alternative, which is  
24 signed by Mr. Soss, at least appears to bear  
25 his signature in the electronic court file on

1 August 11, 2015.

2 There was, at a later time, November 5th,  
3 2015, a Motion to Disqualify Mr. Soss as  
4 Successor Trustee and Motion to Appoint  
5 Independent Trustee.

6 So I find, based upon totality of the  
7 evidence presented in the record, that it was  
8 clear that there was an objection to Mr. Soss  
9 serving as co-trustee or trustee; that he was  
10 on notice of that fact throughout the time.

11 The factual findings I'm making are in  
12 light of the documents and writings contained  
13 in the court file and speak for themselves and  
14 don't really call upon the credibility of any  
15 witnesses from a factual standpoint.

16 Subsequent to all that, evidentiary  
17 hearings were held before Judge Williams, and  
18 in his order of April 7, 2016, he entered an  
19 order granting the motion to disqualify Mr.  
20 Soss as successor trustee and appointing  
21 Mr. Elliot as independent personal  
22 representative and independent trustee.

23 In Judge Williams' order of April 7,  
24 actually April 6, 2016, Judge Williams made  
25 specific factual findings. In paragraph four



1           stating that Dorothy Bloom purported to appoint  
2           Soss and Raymond James on July 23, 2015. This  
3           appointment was never confirmed by the Court as  
4           mandated by the July 22, 2015 order approving  
5           successor trustee's resignation.

6           The rest of that paragraph four says,  
7           "Based upon this purported appointment, Soss  
8           proceeded to act on behalf of the trust."

9           I find it incredible to believe in good  
10          faith that Judge Williams' order was somehow  
11          misinterpreted. I think it's perfectly clear  
12          from the handwritten language in the order as  
13          well as the order Judge Williams entered,  
14          albeit after the hearing on the motion to  
15          disqualify Mr. Soss, that it was clear that a  
16          successor trustee had to be presented and  
17          approved by the court or confirmed by the  
18          court, and that was never done.

19          Based upon the --

20          May I have Exhibit 1, please? Based upon  
21          the testimony of Mr. Kevin Hassalm,  
22          H-a-s-s-a-l-m, the accountant for the successor  
23          trustee Mr. Elliot, contained within Exhibit 1,  
24          he found that the amount of money taken by Mr.  
25          Soss, which doesn't include any alleged

1           overpayments to Ms. Dorothy Bloom, was  
2           \$127,860. Out of that amount, \$18,708.75 was  
3           reimbursed by attorney John Wascom of the Icard  
4           Merrill law firm; \$20,000 of that was paid back  
5           by Mr. Soss because of a court order entered by  
6           me in a prior hearing. That leaves a balance  
7           of \$81,151.25. Mr. Soss has attempted to  
8           justify the payments of those monies by way of  
9           hiring Mr. Wascom to defend him in his position  
10          as trustee against the motion to disqualify as  
11          well as the motion to remove Mr. Bloom as the  
12          personal representative.

13                 Additionally, it's been suggested that I  
14          should consider the lump sum amount of \$9,928  
15          as an appropriate trustee's fee, and six  
16          payments of \$2,572 per month for ongoing  
17          trustee's fees for Mr. Soss. It was suggested  
18          that someone would have to do that and a fee is  
19          appropriate. I'm not going to order that the  
20          money paid to Mr. Wascom, Icard Merrill firm be  
21          refunded.

22                 I will find that while ill-advised and  
23          inappropriate, in light of the clear evidence  
24          that Mr. Soss should not have been named as the  
25          successor trustee, that that money went to

1 Mr. Wascom and the Icard Merrill law firm, not  
2 directly to Mr. Soss. And consequently, to  
3 order the return of those funds would be  
4 inappropriate and an undue punishment to  
5 Mr. Soss.

6 However, as to the remaining amount of  
7 money paid to Mr. Soss, which amounts to  
8 \$25,360, the Court finds that that money was  
9 improperly paid from the trust because Mr.  
10 Soss, although acting as putative or de facto  
11 trustee, was not legally entitled to be paid  
12 that money in light of the Court's orders, and  
13 he was never legally the successor trustee.

14 I find that it would be an abuse of my  
15 discretion to ignore the fact that those  
16 payments were received by Mr. Soss at a time  
17 when he knew or should have known that he  
18 should not have made the payments because he  
19 was not an appropriate trustee; that as an  
20 experienced probate and trustee attorney, if he  
21 had any question about his ability to be  
22 presented and approved by the Court as  
23 successor trustee, simple enough in light of  
24 the fact he clearly knows how to file pleadings  
25 with the Court, he could have set a hearing on

1 the request by Dorothy Bloom to appoint him as  
2 successor trustee and had a hearing. That was  
3 not done.

4 So in light of all the evidence, it would  
5 be inappropriate to ignore those payments, and  
6 for all of those reasons I am going to order  
7 the repayment of \$25,360 from Mr. Soss to the  
8 trust. However, in light of the Court's  
9 earlier ruling today with respect to the motion  
10 for fees and costs on appeal filed by Mr. Soss  
11 on the March 14, 2017 order, in which the  
12 trustee did not object to and consented to the  
13 Court awarding Mr. Soss the amount of \$7,350 in  
14 attorneys' fees, I will throw in \$50.50 for  
15 court costs, will set off the \$25,360 by the  
16 amount of \$7,400.50, which leaves a balance of  
17 \$17,959.50, which Mr. Soss will be ordered to  
18 repay to the trust.

19 The Court declines to award interest on  
20 that money. And all other relief requested in  
21 that motion are deemed to be denied.

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## CERTIFICATION

10 I, NANCY ANNE FLYNN, Registered Professional  
11 Reporter and a Notary Public in and for the State  
12 of Florida, certify;

13 That the foregoing proceedings were taken  
14 before me at the time and place therein set forth.

15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury that  
21 the foregoing is true and correct.

22 Dated this 24th day of September 2018.

23

24

*Nancy Anne Flynn*

25

NANCY ANNE FLYNN, RPR

ASSOCIATED COURT REPORTING OF SOUTHWEST FLORIDA  
(941) 951-1560