

**Matter of Stein**

2012 NY Slip Op 33999(U)

October 15, 2012

Surrogate's Court, New York County

Docket Number: File No. 2012-1498

Judge: Nora S. Anderson

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This opinion is uncorrected and not selected for official publication.

SURROGATE'S COURT : NEW YORK COUNTY

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Probate Proceeding, Will of

ARTHUR STEIN,

Deceased.  
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A N D E R S O N, S .

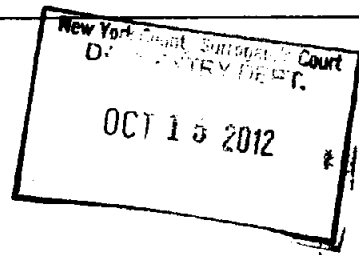
In this probate proceeding in the estate of Arthur Stein, proponent moves to strike from the record the appearance of decedent's former wife, Sandra Silverman, as attorney-in-fact (pro se) for their son Jonathan Stein, at the June 29, 2012 probate calendar.<sup>1</sup>

Ms. Silverman purported to appear for Mr. Stein at the probate calendar under a General Power of Attorney executed on June 25, 2012, in Palm Beach Florida, where Mr. Stein resides. She subsequently recorded the Power of Attorney with this court. However, under Florida law, the Power of Attorney does not authorize Ms. Silverman to act for her son in this proceeding. Section 709.2201(1) of the Florida Statutes provides in pertinent part:

[A]n agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of

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<sup>1</sup> Movant also asks the court to strike the July 26, 2012 Notice of Appearance of Ms. Silverman as attorney-in-fact for Jonathan. However, the court has no record of any filing of such document.



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specific authority. General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent.

The Power of Attorney here contains only a general provision authorizing Ms. Silverman "to do and perform all and every act and thing ... as could be done if [the principal were] personally present."

Nor can Ms. Silverman avail herself of New York law to support her appearance for Mr. Stein. Among other things, the Power of Attorney does not contain the necessary "Caution to the Principal" or "Important Information for the Agent" language required under General Obligations Law § 5-1501B(1)(d) (see GOL § 5-1512). Consequently, under Florida or New York law, Ms. Silverman had no authority to appear for her son at the probate calendar and her appearance is therefore stricken from the record.

Moreover, it is well settled that a layperson cannot appear pro se on behalf of a party as his attorney-in-fact (*see Whitehouse v Town House Equities, Ltd.*, 8 AD3d 369 [2d Dept 2004]). Consequently, even if the Power of Attorney executed by Mr. Stein validly conferred upon his mother authority to act in this proceeding, her appearance would be ineffective because she

did not appear by counsel.

Since no objections have been filed, and no requests for SCPA § 1404 examinations have been made, the probate proceeding is uncontested and a proposed decree may be settled without further delay.

The Clerk of the Court is directed to send a copy of this decision, which constitutes the order of the court, to Sandra Silverman, Jonathan Stein and proponent's counsel.

USA  
S U R R O G A T E

Dated: October 15, 2012