

IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA FOURTH DISTRICT

CASE NO.: 4D16-2249

L.T. NO. 2014CP002815XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant,

vs.

OPPENHEIMER TRUST CO. OF  
DELAWARE, et al.,

Appellees.

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**RESPONSE TO MOTION TO ACCEPT LATE FILING**  
**AND TO RESPONSE TO SHOW CAUSE**

Appellee, Oppenheimer Trust Company of Delaware, et al. (“Oppenheimer”), pursuant to this Court’s October 13, 2016 Order, responds to Appellant’s Motion to Accept Late Filing and to Response to Show Cause as follows:

1. Appellant’s Initial Brief was due in this matter on September 13, 2016.
2. Appellant neither filed an initial brief nor any motion seeking an extension before the deadline. On September 19, 2016, this Court issued an order to show cause why the appeal should not be dismissed and stated that the failure to respond to the order would result in a “sua sponte dismissal without further notice.” This Court allowed until September 29, 2016, for Appellant’s response.
3. Appellant did not respond by September 29, but filed a late response on September 30, 2016.
4. In his response, Appellant relies primarily upon the same alleged medical issues that he has routinely cited in papers filed in the various (and many) proceedings that Appellant

has brought, at least six of which are pending before this Court. As in the other papers filed, Appellant alludes to visits with doctors but does not include any affidavit, report or document from any medical practitioner supporting his claim that filing papers in the legal proceedings that he chose to bring would be harmful to his health.

5. In Appellant's response, while generically attributing the failure to prosecute the present appeal on the alleged physical issues, Appellant refers to a paper he filed on September 6 in this Court in a consolidated appeal (consisting of three of the appeals brought by Appellant). Appellant does not explain why he did not file a motion for extension at or around that time in the present appeal.

6. One other issue worth mentioning: the present appeal is of the trial court's final order discharging Oppenheimer from its role as trustee. At the time of the entry of that order, Appellant was no longer a party and had no legally cognizable interest in this case.<sup>1</sup> While the undersigned recognizes that there will be other opportunities to file motions to deal with the frivolousness of the appeal or lack of availability of, or entitlement to, a remedy, this fact also affects the undersigned's view about whether this Court should further indulge the dilatory practices thus far employed by Appellant in this and all of the related appeals filed in this Court. (See Case Nos. 4D16-0222, 4D16-1449, 4D16-1476, 4D16-1478, and 4D16-3162).

7. Based upon the failure to establish a justifiable basis for not timely filing an initial brief or a motion for extension, the lack of support for the alleged physical issue relied upon by Appellant, and the significant delays in this and all other related appeals and their

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<sup>1</sup> While Oppenheimer believes that this appeal should be dismissed for failure of prosecution, in the event that this Court grants additional time for Appellant to prepare an initial brief, Oppenheimer plans to file a motion to dismiss or abate the present appeal on the basis that Appellant does not have standing to bring an appeal of a final judgment in this matter because he was removed as a guardian earlier this year, is not a party to the proceeding, and has no legally cognizable interest.

impact upon Oppenheimer (and others) as well as this Court, Oppenheimer opposes the motion to accept late filing of the response to the show cause order and of the initial brief and requests that this Court dismiss this appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 24th day of October, 2016.

/s/ Steven A. Lessne  
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## SERVICE LIST

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