

**DRAFT INITIAL BRIEF ON THE MERITS**  
IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD.,  
WEST PALM BEACH, FL 33401

CASE NO.: 4D16-1449, 4D16-1476,  
4D16-1478

L.T. No.: 2014CP002815XXXXNB,  
2014CP002815XXXXNB,  
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v.     **OPPENHEIMER TRUST CO.  
OF DELAWARE, ET AL.**

Appellant / Petitioner(s)

Appellee / Respondent(s)

**AND OTHER TRUST CASE CONSOLIDATED BY 4TH DCA 4D16-1478**

ELIOT IVAN BERNSTEIN vs TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

**INITIAL BRIEF ON THE MERITS**

On Appeal to the 4th District Court of Appeals in a “Consolidated Appeal”  
consolidated over objection by Appellant appealing three (3) Orders of Judge John  
Phillips from 2 separate “Trust” cases with 2 separate sets of parties, pleadings and  
facts all into this appeal where the underlying cases are Trust Cases to be heard

under the Civil Rules of Procedure, not Probate Cases although the lower tribunal heard the cases in Probate Court. Appellant notes that in both separate cases which have been consolidated for Appeal over objection in neither case has any “Original” Trust been produced and in the case of the Shirley Bernstein Trust, not even “copies” of the relevant alleged Trusts have been produced by attorney Alan Rose or his client Ted Bernstein.

It is further noted for this Court that Appellant’s son Joshua Bernstein was over the age of 18 years at the time the Petitions herein were heard and the Orders issued and it was known by attorneys Alan Rose and Steve Lessne and their clients that Joshua Bernstein was over the age of 18 years and that no Guardian/Competency Hearings were held demonstrating the need for Joshua Bernstein to have a Guardian or Guardian ad Litem.

The Orders appealed are:

**TABLE OF CONTENTS**

**TABLE OF CITATIONS**

**CASES**

Vollmer v. Key Dev. Props., 966 So.2d 1022 (Fla. 2 nd DCA 2007).

LOPEZ v. VARIETY CHILDREN'S HOSPITAL, 600 So.2d 506 (1992) District Court of Appeal of Florida, Third District;

Mistretta v. Mistretta, 566 So. 2d 836 (Fla. Dist. Ct. App. 1990) 5th DCA

Chapman v. Garcia, 463 So. 2d 528 (Fla. 3d DCA 1985).

Smith v. Langford, 255 So. 2d 294 (Fla. 1st DCA 1971).

## **STATUTES**

1. Florida Statute 607.1601
2. F.S. 736.0201(1)
3. Florida Probate Code Rule 5.541
4. F.S. 744.109

## **RULES:**

1. <http://15thcircuit.co.palm-beach.fl.us/web/guest/court-reporters>
2. [http://15thcircuit.co.palm-beach.fl.us/documents/19739/25153/courtreporting\\_FAQ.pdf](http://15thcircuit.co.palm-beach.fl.us/documents/19739/25153/courtreporting_FAQ.pdf)
3. Rule 1.210(b) of the Florida Rules of Civil Procedure

## **PRELIMINARY STATEMENT**

The instant proceedings that gave rise to the Order on Appeal appointing a Guardian Ad litem were not a “construction” proceeding of the Oppenheimer Trusts which were not Testamentary Trusts and therefore should not have fallen under the exception in FS 736.0201(5) to be filed or determined in the Probate Court under the Probate Rules. For procedural posture of this and all “related” cases, however, it is noted in fact that there still has never been any “construction”

or “validity” of the involved Oppenheimer Trusts determined despite Appellant raising further “fraud” in Instruments and documents on the record with the involved Trusts herein.

The lower tribunal under Judge Martin Colin, however, somehow had the case marked and filed as a “Probate” case and to the extent the case was marked as a Probate case, the lower tribunal was required by Florida Statutes, Probate Rules and Court Rules to mandatorily Record the Hearing Digitally for Guardians. See, 15th Judicial Circuit Court Reporting Department and 15th Judicial Frequently

### **STATEMENT OF THE CASE AND FACTS**

The Order appointing a Guardian Ad Litem is not supported by any evidence from any Hearing, much less competent substantial evidence as the Lower Tribunal acted illegally abusing its discretion in failing to ensure the Hearing was Digitally Recorded as required according to Florida Statutes 744.3109, Probate Rule 5.541, and the 15th Judicial Circuit Court Rules and Staff from the 15th Judicial Court Reporting Services Department. The arbitrary, capricious and illegal acts of lower tribunal Judge John L. Phillips in denying Digital Recording and denying Appellant time to get a court reporter at the hearing ensured that there is no competent evidence to support the Order.

The lower tribunal abused its discretion by failing to schedule and allow for a proper hearing based on the extensive fraud in the cases and detailed factual pleadings of Appellant which were never heard.

The essence of the argument for appointment of a Guardian ad litem as set out in the Petition filed by attorney Steven Lessne is that Appellant is allegedly a “vexatious” litigant who is on a campaign for justice in the Courts and changing the legal system and further attacking Appellant for doing what every Court in the State of Florida has the obligation to do, address Fraud in the Court and fraud in Pleadings. See, Florida Statewide Court Fraud Policy. \_\_\_\_\_

Yet, attorney Lessne directly committed Fraud Upon the Court in his Pleadings by citing to alleged findings by the US District Court for the Southern District of New York that never occurred. See, Lessne Petition ROA pages \_\_\_\_\_

The Court itself perpetuates this Fraud by making a Finding that Appellant was in fact adjudicated a “vexatious litigant” by the US SDNY District Court. Yet, the Court, in either a further act of direct fraud or act of extreme lack of competence in reviewing pleadings, actually mis-reads and mis-cites pleadings in the same manner as alleged by Lessne. For example,

What the Record on Appeal does show, however, is extensive pleadings showing misconduct of the various Fiduciaries and actual Fraud upon the Court. Yet, the lower tribunal never permitted these pleadings to be heard and never scheduled

sufficient time to hear such pleadings in any event, another act in an abuse of discretion, arbitrary and prejudicial and pre-determined conduct.

## SUMMARY OF ARGUMENT

### **1. Due Process**

- a. Phillips should have disqualified, all Orders should be void
- b. Phillips Violated Court Rules for GAL Cases REQUIRED to be Recorded
- c. Cases should have been heard under Civil Rules for Trust Cases
- d. No Proper Fact Finding Hearing occurred in either case consistent with due process
- e. Both underlying cases consolidated on Appeal represent Fraud upon the Court in the lower tribunal now being advanced on appeal by Appellees;
- f. Appellant was On the Record with perior Judge Colin in Sept. of 2013 Notifying the Court that Oppenheimer Trust Docs were Never Turned over by Oppenheimer and that Estate Funds held at Legacy Bank were going out the door by post mortem misuse of Simon Bernstein controlled accounts;
- g. fraud was alleged fraud in Appellant's May 2013 Emergency Filing involving Oppenheimer accounts and these frauds have never been corrected in the lower tribunal; \*

- 2. NO "Original" Trusts** in EITHER Case have Ever been filed with the Lower Tribunal nor Produced to Appellant by Licensed attorneys Alan M. Rose and Steven Lessne;

3. **Licensed Attorney Alan Rose** has Admitted that NO Trusts Exist in the relevant Shirley Bernstein case and has Never provided even Copies of any such Trust much less any Originals; Alan Rose and Ted Bernstein sued Improper parties under Trusts that do not exist depriving the Court of jurisdiction;
4. Both attorneys Alan M. Rose and Steven Lessne should have been Disqualified as Material Fact Witnesses both were served counter complaints as Defendants as well.
5. Oppenheimer and Attorney Lessne's Petition went beyond any jurisdiction of the Court - Judge Colin's Oppenheimer Order says Oppenheimer ONLY had Standing for an Accounting ( ROA - Pages 528-530 ). Lessne is a resigned trustee can not move court on behalf of trusts. Judge Phillips in effect "reverses" Judge Colin and allows them to plead with no standing as a party, other than submitting and presenting their final accounting (which Appellant claims their being allowed to represent the accounting was reversible error as well as they have no standing once resigned), and denies Eliot and Candice to represent children, leaving them unrepresented minors in proceedings.
6. Minor children Denied Counsel

7. Joshua Bernstein was age 18 at time of Petition and Orders and not Subject to Guardian or Guardian ad litem without full Guardian hearing determinations / competency.
8. Lack of Substantial and Competent Evidence to find a need for a Guardian and Guardian ad litem; Abuse of Discretion and based on deficient hearings, erroneous facts and fraud upon the Court.
  - a) Florida Licensed attorneys Alan Rose and Lessne submitted false and fraudulent findings to the Lower Tribunal to obtain the Orders on appeal;

**The lower tribunal abused its discretion by failing to schedule and allow for a proper hearing based on the extensive fraud in the cases and detailed factual pleadings of Appellant which were never heard.**

## **ARGUMENT**

### **1.**

Procedural due process is a constitutional guarantee. See, e.g., *Vollmer v. Key Dev. Props.*, 966 So.2d 1022 (Fla. 2 nd DCA 2007). Appellant maintains that because this is a Trust case, this is a Civil case and subject to the Florida Rules of Civil Procedure. As set out in Florida Statutes, “736.0201 Role of court in trust proceedings.—



(1) Except as provided in subsections (5) and (6) and s. 736.0206, judicial proceedings concerning trusts shall be commenced by filing a complaint and shall be governed by the Florida Rules of Civil Procedure.” See, FS 736.0201.

The instant proceedings that gave rise to the Order on Appeal appointing a Guardian Ad litem were not a “construction” proceeding of the Oppenheimer Trusts which were not Testamentary Trusts and therefore should not have fallen under the exception in FS 736.0201(5) to be filed or determined in the Probate Court under the Probate Rules. For procedural posture of this and all “related” cases, however, it is noted in fact that there still has never been any “construction” or “validity” of the involved Oppenheimer Trusts determined despite Appellant raising further “fraud” in Instruments and documents on the record with the involved Trusts herein.

The lower tribunal under Judge Martin Colin, however, somehow had the case marked and filed as a “Probate” case and to the extent the case was marked as a Probate case, the lower tribunal was required by Florida Statutes, Probate Rules and Court Rules to mandatorily Record the Hearing Digitally for Guardians. See, 15th Judicial Circuit Court Reporting Department and 15th Judicial Frequently Asked Questions.

## **CONCLUSION**

For all of the foregoing reasons, this Court should vacate and reverse all Orders of Judge Phillips herein and remand all proceedings to a Non-conflicted lower Court for further proceedings herein and \_\_\_\_\_.

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

Dated: November 14th, 2016

**/s/ Eliot Ivan Bernstein**  
Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

## **CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 14th day of November, 2016.

**/s/ Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**SERVICE LIST LOWER CASES DEFENDANTS, RESPONDENTS,  
COUNTER DEFENDANTS**

<p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0766-Telephone (561) 833-0867 -Facsimile Email: John P. Morrissey (iohn@jrnoiTisseylaw.com)</p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa@friedsteins.com</p>
<p>Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile Email: service@feamanlaw.com: mkoskey@feamanlaw.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell &amp; Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431</p>	<p>Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher &amp; Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432</p>

<p>(561)241-2323 - Telephone (561)241-2330-Facsimile  Email: gary@shendellpollock.com  ken@shendellpollock.com  estella@shendellpollock.com  britt@shendellpollock.com  grs@shendellpollock.com</p>	
<p>Brian M. O'Connell, Esq.  Joielle A. Foglietta, Esq.  Ciklin Lubitz Martens &amp; O'Connell  515 N. Flagler Dr., 20th Floor  West Palm Beach, FL 33401  561-832-5900-Telephone  561-833-4209 - Facsimile  Email: boconnell@ciklinlubitz.com;  ifoglietta@ciklinlubitz.com;  service@ciklinlubitz.com;  slobdell@ciklinliibitz.com</p>	<p>Counter Defendant  John J. Pankauski, Esq.  Pankauski Law Firm PLLC  120 South Olive Avenue  7th Floor  West Palm Beach, FL 33401  courtfilings@pankauskilawfirm.com  john@pankauskilawfirm.com</p>
<p>Counter Defendant  Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net</p>	<p>Counter Defendant  Donald Tescher, Esq.,  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein  880 Berkeley  Boca Raton, FL 33487  tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant  TESCHER &amp; SPALLINA, P.A..  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein</p>	<p>Counter Defendant</p>

<p>Life Insurance Concepts, Inc.  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  tbernstein@lifeinsuranceconcepts.com</p>	<p>Alan B. Rose, Esq.  PAGE, MRACHEK, FITZGERALD,  ROSE, KONOPKA, THOMAS &amp;  WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  561-355-6991  arose@pm-law.com  arose@mrachek-law.com</p>
<p>Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  psimon@stpcorp.com</p>	<p>Counter Defendant  L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD,  ROSE, KONOPKA, THOMAS &amp;  WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  561-355-6991  lmrachek@mrachek-law.com</p>
<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>	<p>Counter Defendant  Pankauski Law Firm PLLC  120 South Olive Avenue  7th Floor  West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein  2142 Churchill Lane  Highland Park, IL 60035  lisa.friedstein@gmail.com  lisa@friedsteins.com</p>	<p>Dennis McNamara  Executive Vice President and General  Counsel  Oppenheimer &amp; Co. Inc.  Corporate Headquarters  125 Broad Street  New York, NY 10004  800-221-5588  Dennis.mcnamara@opco.com</p>

	info@opco.com
<p>Dennis G. Bedley  Chairman of the Board, Director and  Chief Executive Officer  Legacy Bank of Florida  Glades Twin Plaza  2300 Glades Road  Suite 120 West – Executive Office  Boca Raton, FL 33431  info@legacybankfl.com  DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq.  President  Oppenheimer Trust Company of  Delaware  405 Silverside Road  Wilmington, DE 19809  302-792-3500  hunt.worth@opco.com</p>
<p>James Dimon  Chairman of the Board and Chief  Executive Officer  JP Morgan Chase &amp; CO.  270 Park Ave. New York, NY 10017-  2070  Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson  President &amp; Chief Executive Officer  Wilmington Trust Company  1100 North Market Street  Wilmington, DE 19890-0001  nwolfson@wilmingtontrust.com</p>
<p>William McCabe  Oppenheimer &amp; Co., Inc.  85 Broad St Fl 25  New York, NY 10004  William.McCabe@opco.com</p>	<p>STP Enterprises, Inc.  303 East Wacker Drive  Suite 210  Chicago IL 60601-5210  psimon@stpcorp.com</p>
<p>Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin Forman  Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  crubin@floridatax.com</p>	<p>Ralph S. Janvey  Krage &amp; Janvey, L.L.P.  Federal Court Appointed Receiver  Stanford Financial Group  2100 Ross Ave, Dallas, TX 75201  rjanvey@kjllp.com</p>

<p>Kimberly Moran  Teschler &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin  CBIZ MHM, LLC  1675 N Military Trail  Fifth Floor  Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC  General Counsel  6480 Rockside Woods Blvd. South  Suite 330  Cleveland, OH 44131  ATTN: General Counsel  generalcounsel@cbiz.com  (216)447-9000</p>
<p>Albert Gortz, Esq.  Proskauer Rose LLP  One Boca Place  2255 Glades Road  Suite 421 Atrium  Boca Raton, FL 33431-7360  agortz@proskauer.com</p>	<p>Heritage Union Life Insurance  Company  A member of WiltonRe Group of  Companies  187 Danbury Road  Wilton, CT 06897  cstroup@wiltonre.com</p>
<p>Estate of Simon Bernstein  Brian M O'Connell Pa  515 N Flagler Drive  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com</p>	<p>Counter Defendant  Steven Lessne, Esq.  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr.  President &amp; Managing Director  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432</p>	<p>Steven A. Lessne, Esq.  Gunster, Yoakley &amp; Stewart, P.A.  777 South Flagler Drive, Suite 500  East  West Palm Beach, FL 33401</p>

<p>biff.marshall@gray-robinson.com</p>	<p>Telephone: (561) 650-0545  Facsimile: (561) 655-5677  E-Mail Designations:  slessne@gunster.com  jhoppel@gunster.com  eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>	<p>David Lanciotti  Executive VP and General Counsel  LaSalle National Trust NA  CHICAGO TITLE LAND TRUST  COMPANY, as Successor  10 South LaSalle Street  Suite 2750  Chicago, IL 60603  David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese  Chairman  Proskauer Rose LLP  Eleven Times Square  New York, NY 10036  jleccese@proskauer.com</p>	<p>Brian Moynihan  Chairman of the Board and Chief  Executive Officer  100 N Tryon St #170, Charlotte, NC  28202  Phone:(980) 335-3561</p>
<p>ADR &amp; MEDIATIONS SERVICES,  LLC  Diana Lewis  2765 Tecumseh Drive  West Palm Beach, FL 33409  (561) 758-3017 Telephone  Email: dzlewis@aol.com  (Fla. Bar No. 351350)</p>	