Family Court of the State of New York,
Rockland County

In Re: R v R
Docket No. F-1893-09
FU 14360 **Submitted:** Friday, June 11, 2010

Respondent's Objections to "Findings of Facts" and "Order of Support"

AMMENDED

Respondent filed his OBJECTIONS on May-24, 2010 within the statutory limit of 35 days from the date of entry of April-19, 2010, despite the fact that the court did not serve him with said Order and Findings.

As stated in the Preamble of his May-24 OBJECTIONS, the Family Court failed to serve him with said "Findings" and "Order," and repeatedly failed to provide a copy of thereof for 4 weeks, despite the Respondent's multiple requests in person, over the phone and in writing, until he finally obtained a copy in person in the family court on May-13, 2010, but not before he stated he would complain to the Chief Judge of the Sate of new York unless a copy is released.

As Respondent stated in the original OBJECTIONS filed May-24th, the Respondent reserved the right to amend said objections through June-12, the 30th day from his receipt of a copy of the Order and Finding of Fact in court.

His amended (final) "OBJECTIONS" are herewith below. A copy of the OBJECTIONS and related documents are being furnished to the NYS Commission on Judicial conduct and NYS public officials.

As a courtesy to the court, Respondent attaches a copy of the transcripts, already in Court's possession, already provided to the court by Sandy Saunders Reporting.

Signed:

RESPONDENT'S OBJECTIONS TO "FINDINGS OF FACT" AND "ORDER" OF CS

I. 1. **A forerunner to the factual "accuracy" of the "Statement of Fact" by the Support Magistrate Catherine Miklitsch is her opening sentence, apparently false**: **"**GR and ER were married on May 14, 1998, and are still husband and wife."[1] (They were divorced 6 years ago)**.** Just like its opening sentence**,** all else in the "finding of fact" is untrue. As shown below, the Examiner's Order is unjust and improper, marked with intellectual, partisan dishonesty, making it clear that the Examiner had no intention to seek equity and fairness. The false "findings" and the lengths, to which the court went to conceal its "findings" and order from the Respondent, were designed to fleece the Respondent while the so fabricated "order" is either concealed from Respondent (which the court did) or appealed.

– The parties were divorced over 6 years ago, in 2004, after a protracted, bitter divorce docketed in 2001. The Examiner consulted their divorce decree several times at the Dec-07, 2009 hearing [Transcript: P31-32; [35, 10-14],[2] and cannot claim lack of knowledge. The divorce decree incorporated the couple's prenuptial agreement, stipulating 50-50 physical and legal custody split and NO child support changing hands, as well as 50-50 property split predicated on 50-50 custody. Respondent specifically asked the court to take judicial notice of the Divorce Decree [31, 18-19.] Apparently, the Examiner did not, choosing a fantasy instead.

– Not only did the Examiner fail to take judicial notice of the divorce decree (to declare the R's to be "husband and wife," she took no judicial notice of the court files and decisions; and she specifically refused to take notice of the U.S. Government sources whose accuracy cannot be reasonably questioned. As a result, the "facts" enumerated in the "Findings of Fact" and Order are as patently false as its opening sentence.

II. The Examiner imputed that **"Respondent has the ability to earn $986.14 gross weekly."** – Examiner projected and perpetuated forward the one-off lucky earnings period in the first 17 weeks of the year 2008, the income which patently cannot be replicated, into 2010 and beyond. She imputed such income, despite Respondent's all-out efforts to find employment in the last 2 years at his advanced age of 64. She ignored the fact that in the last 11 years Respondent's earnings were below the poverty line; She ignored voluminous evidence on file and in testimony that the Petitioner deliberately and systematically destroyed Respondent's employment in 2001 and thereafter and chances to find Employment; She ignored the Petitioner's expressed determination to continue to do so in her testimony; Examiner ignored the unemployment rates worst in 70 years and Respondent's advanced age making him unemployable. Examiner conducted a partisan hearing marked with abuse of discretion and civil procedure, telling the Respondent, "**just testify to what I say you can testify to."** [49, 1-4]

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[1] All emphasis added.
[2] Respondent also received a summons for a "violation" of a non-existent CS "order" presumably issued in 2002, when no such order was in effect.

1) Respondent testified that since 2001 he was making **between 3,000 and 9,000 a year as an adjunct professor** [43, 1-9]. He testified that in 2006, during a family court proceeding, his former wife made a vexatious false report to the two colleges where he worked that his Ph.D. was "fake." He testified that he was laid-off as a result.[43] His 11-months contract with Citigroup was a lucky one-off, temporary "sponsorship" income payable to a FA-in-training, which ended in April-2008. The sponsorship paid to an FA-in-training is a one-time event in a FA's career, an event that cannot be replicated after the FA's examinations and certifications are complete. *To extrapolate a temporary "lucky strike" income from over 2 years ago into the Respondent's ability to earn going forward is unjust and improper: it is the same as to declare that a retired lottery winner who won $1 million must now earn $1 million annually, perpetually.*

2) The Examiner did not state any reasons for imputation. She knew and acknowledged in her "Findings of Fact" that the Respondent "*had no income from wages as of the filing of the petition or the date of the hearing.*" While she alluded to his "resources," in the "findings of fact," she appointed a lawyer for a violation hearing, as she knew Respondent's resources were exhausted, to which he testified many times at the hearing. Thus, she knowingly abused discretion by imputing income. The court went as far as concealing the order from the Respondent, deliberately, despite his numerous inquiries directly to the court [03/04/2010 P6, 19-20], over the phone and through RFI forms on 04/26/2010 and 05/13/210. The court's (deliberate, as it appears) failure to serve was designed to cause the Respondent to fail to appeal the order (of which he knew nothing as it was concealed from him, for all practical purposes) within the statutory period. – Is it an innocent, isolated mistake or the court's deliberate tactic and *modus operandi?* Apparently, it is not an isolated mistake, but one in a chain of inexplicably one-sided mistakes, which cost the Respondent thousands of dollars to rectify, and if unnoticed, would have set Respondent in debt tens of thousands of dollars, and in jail, as his real income has been below zero.

3) Thus, on 03/04/2010 the Examiner summoned Respondent to a "violation hearing" for a non-existent order of support presumably issued on February 9, 2002 [03/04/2010 P3, 11-12], while Petitioner applied for CS in July-2009. A simple reading of the transcript shows the Examiner's frantic efforts to keep this deliberate "mistake" off-the-record[3] of the proceedings. When the Respondent points out that no such order exists, the Examiner speaks over the Respondent, telling him to shut up immediately and threatening that she would "read him his rights." [[03/04/2010 P4, 23-24] If the Respondent did not succeed in putting on the record that there should have been no such order outstanding, the court and CSC would have sanctioned the Respondent in a variety of draconian ways **for a knowingly fictitious order**, **setting him in debt for… 8 years, landing him in jail, falsely, on a "court's innocent mistake" which is hard-to-impossible to rectify once the mistake is committed.** Regardless of the reasons behind such "mistakes," the result is the same.

[3] Transcript of hearing on March-4, 2010 [3, 7-25], [4, 1-25]; Notation [3, 7-25] means Page 3, Lines 7 through 25.

4) As a reading of the transcripts shows, these are not "clerical errors" or "innocent" or "isolated" mistakes, especially in view of the Examiner's "Findings of Fact" which has no foundation in fact, in testimony or in reality, and is fiction in its entirety. Not only is the Respondent a 64-year-old-retiree, he is an immigrant for whom English is a second language. Based on his observations and experience, Respondent believes that many more people, especially from the immigrant community, those with difficulty to understand what is happening to them and why, and those easily frightened by the Examiner's intimidation tactics, are ripped-off, victimized and made into outlaws by the court's tricks pulled under the color of law and in guise of discretion afforded to judges.

5) The CSC supervisor testified that Citigroup reported the Respondent's total annual income for 2008 as, "**The annual, $16,764.45**." [12, 13-14]. CSC testified "**there was no rate of pay"** [12,19-20]. The Examiner converted a one-time, temporary sponsorship income available to him briefly only as an FA-in-training in 2008, and only for 17 weeks, imputing to Respondent the ability to earn **$51,279.28** annually[4] without stating any reasons, or having any reasons for income imputation, despite plentiful evidence that he cannot attain any income. Such income imputation is tantamount to abuse of power.

6) There is no evidence that Respondent quit, lowered or had any incentive to lower his earnings, or was fired for a cause. In fact, the opposite is apparently true – he was laid off at the time of massive lay-offs by the Citigroup[5] which sold-off the very FA business, in which he worked. Only the top producers among old-timers with a practice built over 20-40 years survived the 2008-09 market crash. Just like numerous "mortgage origination" companies were wiped off the face of the Earth, the rookie FA's including the Respondent, had their careers terminated for good.

7) Respondent testified that the 11-months contract as a Financial-Advisor-trainee was neither salaried nor a "job." [42,9-25]. Respondent testified that all of his former colleagues were unemployed [49, 5-9]. Once out of training, Respondent had no salary and had to make a living on commissions as a registered representative not earning enough to cover the wire-house expenses of the "sponsor."

8) Under federal and NY laws, trade publications and government publications are self-authenticated evidence.[6] The recent edition of a trade publication "*Investment News. The Leading News Source for Financial Advisors,*" recognized that ""*It's difficult to start that kind of practice from scratch… reps with three to five years' [experience] doing about $150,000" in annual production[7], a… result reflective of the difficult market."*[8] Reps

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[4] "Findings of Fact" Appendix A. Itemization of Income and Deductions of Custodial and Non-Custodial Parents.
[5] Citigroup's layoff of 52,000 makes history. New York City's second-largest private employer is cutting its payroll. Crain's New York Business. Nov-17, 2008.
http://www.crainsnewyork.com/article/20081117/FREE/811179995

[6] Supra.
[7] FA's earnings are based on a small percentage of annual production, commission or / and fees.

(industry parlance for FA's), with 3-5 years in practice and $150K production – even in a best case scenario of their clients agreeing to pay advisory fees of up to 1% (most clients reject advisory fee contracts) – would earn no more than $1500 annually. Individual investors rarely agree to pay advisory fees, so the FA's annual earnings are far below the 1% of production – a couple of hundred dollars of commissions, if that much.

9) The Petitioner was also an FA who did not make it, despite being in the profession 2 years longer than the Respondent. She left her FA position with JP Morgan Chase (JPM) in 2009 for a salaried position of a JPM Personal Banker as soon as the "sponsorship" by JPM began to dwindle. Her testimony about switching to a personal banker position is on the court's 2009 file, and in her testimony at the hearing [14, 10-11]. Petitioner was fired in March or April of 2008, at the same time the Respondent's contract expired, although in her case she was fired from David Learner Associates for a cause – falsifying customer signatures on insurance contracts.

10) <u>There is no reason to suspect that Respondent might have wished to artificially "lower" his earning</u>: Respondent's contract expired at the time of massive layoffs by the Citigroup, tens of thousands in the NY metro area alone (Id). Respondent had 50% legal and physical custody of his son at the time and for another 1 ½ years thereafter. His only incentive was to earn as much as possible: he was paying over $4200 monthly on mortgage, taxes and expenses on two parcels of real estate, both repossessed by the Trustee in Petitioner's 2004 bankruptcy, as a result of Petitioner inconsistent positions in two courts: she denied her 50% interest in said properties in the federal court, while simultaneously asserting and getting it in the state divorce court.

11) Respondent took on the contract, despite a high risk of "non-performance" in a quickly deteriorating economy. Respondent was contractually liable to reimburse the Citigroup for the costs of "sponsorship," background checks and bonding, for a total of $75,000, in case of "non-performance," "non-compliance" or "misrepresentations."

12) There's no evidence of any "foul play" by Respondent, which the income imputation implies, and the Examiner stated no specific reasons for income imputation. Nor is there any truth to the "other resources" the Examiner ascribed to him in a cavalier fashion, with no foundation in fact or evidence and despite his testimony that he was broke unable to pay for a transcript.

13) Citigroup, his temporary employer in early 2008, itself survived only through infusion of $45 billion of the tax-payers' (TARP) money.[9] The first 17 weeks of 2008 when he was still in training and paid sponsorship do not show Respondent's capacity to earn. A Financial Advisor is a glamorized term for a stock-broker who makes a living on commissions and fees and pays a significant portion of his earnings to the "wire-house" such as Citigroup for research, order execution, office, communications, and other

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[8] "**Wirehouses have hard time building up broker head count**." By Dan Jamieson. February 14, 2010. http://www.investmentnews.com/article/20100214/REG/302149977

[9] See, e.g. http://bailout.propublica.org/main/list/index

services. Just like it wiped off the face of the Earth the "mortgage originators," the next leg of 2008-09 market crash crushed the careers of rookie FA's with less than 10 years in practice.

14) At the Dec-07, 2009 hearing the Respondent submitted a "**Petition to Modify the Temporary order of CS,"** [44,10-11] with attached exhibits of U.S. Bureau of Labor statistics and N.Y. Department of Labor, tabulations and articles from major newspapers and business magazines, and congressional testimonies relevant to his job search. The Examiner demonstratively and angrily tore-up the Petition To Modify the CS and the Exhibits – though thankfully – she spared the 74 pages of his job search [Transcript. Pages 44-45]. She then declined his second attempt to introduce these printouts into evidence:

<<Q **Wait, wait. They're not in evidence, sir. I don't want you to give me any statistics by the Labor Department. Unless you've got certified records from the Labor Department you cannot refer to them, you cannot testify to them.**

A They're a matter of common knowledge. They're—
Q Sir, I'm not taking judicial notice of them. You don't have certified records here, so just testify to what I say you can testify to.>> [pages 48-49] [10]

The Examiner abused discretion denying such evidence: The print-outs of Government agencies and news media websites require no certification under the New York rules and laws[11] of evidence, just as in Federal Courts under federal exception rules 803, 804. [12] Such records are automatically stamped with their URL and detailed information, data set source, author and date of the publication, and as such are self-authenticated, requiring just a question if they are "true and accurate" representations of the web pages. The courts in N.Y. and throughout the states in the US routinely take *Judicial Notice of the Facts on the Internet.*[13] To

[10] A – Respondent; Q – Examiner. Emphasis added.

[11] pursuant to CPLR 4518(a), and the New York State Technology Law §306.

[12] 803. Hearsay Exceptions, statements which are hearsay, but are nevertheless admissible.: ***8) Public records and reports.*** *Records, reports, statements, or data compilations, in any form, of public offices or agencies…* ***(17) Market reports, commercial publications.*** *Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.*

[13] Here're some examples of Appellate Courts citing information found on the Internet: the time of sunrise found on the Web site of the U.S. Naval Observatory [*U.S. v. Bervaldi*, 226 F.3d 1256, 1266 n.9 [11th Cir. 2000]]; the prime interest rate on the Federal Reserve Board Web site [*Levan v. Capital Cities/ABC Inc.*, 190 F.3d 1230, 1235 n.12 [11th Cir. 1999]]; Records of retired military personnel on a federal Web site [*Denius*, 330 F.3d at 926]. Even from some arguably less reliable commercial Internet sites, including mileage information on Mapquest [*In re Extradition of Gonzalez*, 52 F. Supp. 2d 725, 731 n.12 [W.D. La. 1999]]; historical information on Liberia on the "Geocities" Web site [*Bridgeway Corp. v. Citibank*, 45 F. Supp. 2d 276, 278 n.2 [S.D.N.Y. 1999]]; and information regarding a bank's ownership from the bank's Web site [see *Laborers' Pension Fund v. Blackmore Sewer Constr. Inc.*, 298 F.3d 600, 607 [7th Cir. 2002]].

quote, in relevant part, a 2006 New York Law Journal article, "**Government Agency Web-Site Evidence at Trial**"[14]

> "Information on Web sites is normally an indication of authenticity because the URL correlates to the entity whose server is publishing information."

Thus, in *Miriam Osborn Mem'l Home Ass'n v. Assessor of Rye*, 2005 NY Slip Op 25354; 2005 N.Y. Misc. LEXIS 1824 (Sup. Ct. Westchester Co. 2005,) the Court held that the print-out of data maintained by the New York State Office of Real Property Services (ORPS) was admissible pursuant to CPLR 4518(a), and the New York State Technology Law §306.

By rejecting relevant evidence made available by the government, the hearing Examiner deliberately "**blinded herself**," as the Court's sublimely expressed: [15]

> "For a researcher not to employ information placed on a governmental web site, by a civil servant, for the benefit of the public would, indeed, be negligent and ridiculous. **For a judge to ignore these new technological changes, made available by government and encouraged by court systems, would be to blind oneself**." [Emphasis added]

The Examiner "blinded herself" by deliberately turning a blind eye to the commonly-known facts, which she knew or should have known to be true beyond controversy: a) The years 2008 -2010 were the years of the worst unemployment in 70 years, b) the 2008-09 market crash took Citigroup on the brink of extinction when its stock plunged from $56 in 2007 to $0.97 in 2009[16] and Citigroup went through massive layoffs[17]; c) While the national unemployment rate rose to 9.9% in April 2010, the true unemployment rate climbed to 17.1 % and to the all-time-high of 17.4 percent;[18] d) At his advanced age of 64, Respondent – formerly an IT worker and a rookie FA employed for just 11 months more than 2 years ago – has much less than 50% chance of finding any work, according to even the rosiest projections by the **SSA**.[19] Unless her

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[14] "**Government Agency Web-Site Evidence at Trial**," by Joseph D. Nohavicka," **New York Law Journal, January-19, 2006.** (Respondent ordered and received a reprint from the Library Services of the NY Unified Court System.)

[15] *NYC Medical and Neurodiagnostic, P.C., v. Republic Western Ins. Co.,* 3 Misc3d 925; 774 NYS2d 916 (Civ. Ct. Queens Co. 2004)).

[16] Bear Market Investments. Citigroup Stock Sinks to An All-Time Low of 97 Cents. http://www.bearmarketinvestments.com/citigroup-stock-sinks-to-an-all-time-low-of-97-cents

[17] Id.

[18] Economy Watch. Washington Post. http://voices.washingtonpost.com/economy-watch/2010/05/truer_unemployment_rate_rises_2.html

[19] Research commissioned by the Social Security Administration: "*Discouraged Workers? Job Search Outcomes of Older Workers*" by Nicole Maestas, and Xiaoyan Li, write to: RAND Corporation, 1776 Main Street, P.O. Box 2138, Santa Monica, CA 90407-2138, A copy may be obtained also from: *University of Michigan Retirement Research Center*. Research Paper Series, PO Box 1248, Ann Arbor, MI 48104 USA, Phone: 734-615-4589, or downloaded from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095278## *Michigan Retirement Research Center Research Paper No. WP 2006-133*

mind was made up to impute income to Respondent even before the hearing, despite the hard facts, why would she reject this evidence?

When a hearing judge tells a *pro se* litigant, "**just testify to what I say you can testify to**" she openly intimidates a witness, suppresses his testimony, suppresses the federally provided and N.Y. State agency evidence – on the false pretexts of "rules of evidence" – while she deliberately misinterprets such rules. A reading of the transcript shows the Examiner interrupted, and limited testimony only to the answers elicited by the Examiner's leading questions. At the same time, the Hearing Examiner improperly acted as the Petitioner's legal counsel, directing her not to answer Respondent's questions [33,18-25], [34, 1-3.] The apparently falsified result of such "legal process" may not be deemed "just and proper." It's unjust on its face, the result of improvident exercise of discretion.

15) The **U.S. Bureau of Labor** statistics show the current unemployment at levels not seen since the Great Depression of 1930's: the unemployment rate in NY and Northern NJ has more than doubled since 2007: it was **4.5% in 2007** (when Respondent was contracted by Citigroup), **8.3% in 2009** and **9.3% in 2010**.[20] *To impute to a 64-year-old Respondent that he has the same ability to find a permanent job in the environment of the worst unemployment in the last 70 years, as he had in the environment of full employment of 2007—and then it was a temporarily, one-time event that cannot be replicated – is arbitrary, unjust and improper.*

According to the **Social Security Administration-**commissioned research, published in 2006, **older workers, age 49+, have less than a 50% chance to find work.** This research requires no certification. Respondent, who at the hearing was 63, has less than a 50% chance of finding any employment, let alone employment in his fields of experience which were affected the worst [pp 42-43; 46, 21-25]. In a written Testimony before the U.S. House Judiciary Committee, Dr. Norman Matloff, professor of computer science at the University of California at Davis, testified of rampant age discrimination in IT,[21] forcing 35-year-old engineers out of the profession (Respondent, formerly an IT worker, is near 64.) (*Id. At "5. Rampant Age Discrimination— at Age 35.")*

In the '*Overview and Exceutive Summary'* Dr. Mattloff testimony he stated that employers limit the IT labor pool from which they hire to "*new or recent college graduates, who are cheaper in salary than established programmers, cost less in terms of benefits because they are typically single, and whose single status facilitates working large amounts of unpaid overtime"; and "foreign nationals on work visas, who often work for lower pay."*

Dr. Matloff analyzed the department of Labor 2008 statistics to show a "Failure to recognize the age issue... Type II savings : hiring younger (i.e. cheaper) H-1Bs in lieu of older (i.e. more

[20] http://www.labor.state.ny.us/pressreleases/2008/October16_2008.htm; http://www.bls.gov/web/metro/laulrgch.htm

[21] http://www.mnforsustain.org/matloff_testimony_myth_of_labor_software_shortage.htm Archived: http://heather.cs.ucdavis.edu/itaa.real.pdf

expensive) Americans. [22] In the "Myth of Postgraduate Degree" in engineering or computer sicience he writes, "the negative impacts [of having a postgraduate degree] are serious: Swelling of the labor pool of **scientists and engineers, many of whom suffer from chronic unemployment, and often permanent lack of opportunity to work in their field**."[23]

Characrtersitiocally of the Examiner's "Findings of Fact", in an e-mail which she singled-out in his Job Search to critique, she omitted the reason for a job mismatch stated in the very opening paragraph by the headhunter: **"It is <u>a much more junior</u> position than the ones you've done..." –** the employer-speak for "seniors need not apply."

16) **As Respondent testified, his former wife did everything she could in 2001 to destroy and forever derailed his successful computer business and career, which he had built over a life-time of hard work. She derailed his adjunct faculty position career in 2006 by vindictively leveling false allegations which universities have no way or money to disprove or fight off. At the hearing, she expressed a burning desire to continue to do so "anywhere." [36,1-2].** Today, when unemployment is the worst in 70 years, Respondent's chances are worse than the result published by SSA in 2006 (unemployment doubled since then.) To impute to a 64-year-old retirement age former IT worker *a permanent income* of **$51,279.28 a year**, when his income averaged **under $6,000** in the last 11 years, and his real chances to procure employment are none, is unconscionable. Even his 10-year younger former colleagues are "*Out of a job and out of luck at 54*,"[24] unable to find a job.

17) Respondent's all-out efforts to secure any employment at any level have been unsuccessful for over two years, to which he testified and submitted 74 pages of job search. He was informed by his SSA agent that he and his Child are entitled to Social security retirement for which they applied. His Child is receiving $969 monthly, while Respondent is supposed to receive $1604, payable on the 3d of each month starting in June 2010. However, the Examiner's false "findings" resulted in seizure by CSC of Respondent's social security retirement payments. The Examiner effectively forked over to his former wife, a banker with over $40,000 base annual salary, $969 monthly from SSA for the "Child of a retired Worker" plus the maximum the CSC is allowed to seize from SSA check -- $962.40, leaving $641.60 a month for Respondent's shelter, food, transportation, taxes and medical expenses (the Respondent has no medical insurance,) placing Respondent way below the poverty line. The Hearing Examiner's judicial activism deliberately produced a result which is unconscionable on its face.

18) It is ludicrous to suggest that Petitioner receives the Hearing Examiner's largess of $1931.40, earned by Respondent's life-time of work "for the benefit of the Child" or "legally": in all prior years, Respondent spent his retirement money paying for the

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[22] **New Insights from the Dept. of Labor PERM Labor Certification Database**. By Norm Matloff. Department of Computer Science. University of California at Davis, January 18, 2008 http://migration.ucdavis.edu/wcpsew/files/NMatloff.pdf

[23] http://www.engology.com/ArchMatloff.htm

[24] http://money.cnn.com/2008/05/21/news/economy/olderworkers/index.htm?postversion=2008052113

Child's education, medical care and the best summer camps, while Petitioner "mama" never once contributed anything towards the Child's needs. The naked truth of this ugly case is that hearing Examiner has engaged in a re-distribution, under the color of law, on the pretext of the best interest of the child, and on the falsely concocted "findings of facts" of the Respondent's scarce retirement income to the Petitioner mother.

19) At the hearing, the Petitioner suggested that Respondent should take on ANY job. Respondent testified he tried, unsuccessfully. [50, 18-25], [51, 1-7]. It's highly unlikely the Child Support would be anywhere near the SSI payment of $969 per month to his Child, even if Respondent succeeded in finding ANY job. Thus, the Social Security payments to his "Child of a Retired Worker" exceed any potential CS payments he would be able to make, even if he found a job.

20) Respondent's 74-page sampler of job search (Exhibit C) showed that several personal banker positions for which he applied and interviewed[25] were filled by people in their twenties, not white men in their mid-60's, as himself, a group most discriminated against in employment. The distinct tenor of the replies by employers and headhunters, as easily gleaned from Exhibit C, is that they **look for "junior" people with 3 years experience after college, not a 64-year-old.** The very email message from the Headhunter, which the Examiner chose to criticize the Respondent's job search effort, stated so in its very opening line by the Headhunter, "**It is <u>a much more junior</u> position than the ones you've done** …" – the thinly veiled message of employment ads, "seniors need not apply."

21) In her "Funding of Fact" the Examiner deliberately ignored Petitioner's attack on Respondent's efforts to find a source of income: The Respondent had interviews at JPM. Petitioner went on to "cite" some non-existent JPM "policy" which presumably precluded Respondent from obtaining employment at any of the thousands of JPM branches, just because Petitioner happened to work at one of them [47, 1-18]. Such false claims by Petitioner while under oath <u>show a pattern of a vindictive effort to undermine Respondent's earning capacity, employment and job search .</u>

22) Respondent testified that Petitioner told his employers at Mercy College[26] and Saint Thomas Aquinas College (STAC) that his Ph.D. was "fake" and that "she did not feel it was right that Mr. R was taking jobs away from qualified people who had real degrees."[27] She did so in 2006, as a vexatious tactic during a 2006 Family Court proceeding, [36,3-8]. Simultaneously with family court proceedings (not a random coincidence), she caused major flooding in the Respondent's condo, which she occupied illegally, causing him tens of thousands in legal fees and fines by the condominium board. She learned that to gain legal advantage in the family court, she can make brazenly false allegations of any kind with absolute impunity, while causing her ex-husband legal and financial pain, which she did repeatedly. Petitioner brings on

[25] 12.eml, 13.eml, 15.eml, 17.eml, 125.eml, 211.eml, 313.eml.
[26] where she also worked as an Admissions Councilor.
[27] Court File: Forensic Report by Dr. Heller, May-29, 2009.

the false allegation of a "fake Ph.D." despite the fact that the issue had been presumably put to rest during the 2002 forensic investigation by the family court, at which time the probation department copied all of the Respondent's diplomas, their official evaluations, and his security clearance papers. Indeed, the Hearing Examiner who willingly denies the facts by the U.S. Bureau of Labor Statistics just as willingly lends a sympathetic ear to a tired false allegation designed to plant the seeds of prejudice.[28]

23) Respondent testified that he was fully bonded, his educational credentials verified many times, the last time in 2007 by the Citigroup, he had a security clearance and was fully bonded through 1990's. When he asked if she made such complaints, Petitioner replied, "***I do not recollect*** *[sic] [36, 1-8]"* – an evasive answer. To make it sound more believable, she testifies that she complained… but to the Police. Petitioner's revenge is beside the point here. The Examiner's failure to assess its impact on Respondent's employment, however, is abuse of discretion and deliberate concealment of the preponderant evidence.

24) The Examiner asserted that the Respondent's personal knowledge of Petitioner's false reports to his employers [Id], as well as her admissions of same to the court-appointed-psychologist, was "inadmissible." The Examiner abused discretion, when she ignored volumes of such evidence (constituting preponderance of the evidence) on the court's file and during the hearing, and especially in light of Petitioner's own testimony under oath, "… **you created a fake Ph.D. I can testify anywhere**." [36, 1-2]

25) There is an abundant evidence on the Family Court file that she tried to harm Respondent's reputation by spreading other ludicrous, but vicious and harmful rumors, such as that he was "gay,"[29] that he had "sex on the kitchen table" with his girlfriend in presence of his Child, no less – a claim rejected as "not credible" by the court-appointed Forensic Psychologist Dr. Heller, her false reports to the CPS found to be false by the Administrative court in 2005.

26) In 2001 GR petitioned family court and the CPS with false allegations of Respondent's alleged unspeakable cruelty to his child. By doing so, she instantly obtained TRO, temporary custody and much legal leverage in the Family Court, despite an outstanding order of protection and charges of Assault in the Second Degree leveled against her by the People in the criminal court. Her blood-curdling allegations in the report were found to be false on Appeal[30] after testimonies by many eyewitnesses to the alleged events. The Appeal was not heard until the summer of 2005. Meanwhile, Respondent could NOT work as a teacher for five years, due to a maliciously false report by the sociopathic Petitioner to the CPS of such falsely alleged acts. The court's files show that she was a bigamist holding herself wife to two husbands for many years entered the US on a false visa, fake passports and lied on her marriage certificate about her marital

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[28] The Court of Appeals in Kessler v Kessler (1962) 10 NY2d 445, 225 NYS2d 1, 180 NE2d 402, 11 NY2d 716, 225 NYS2d 996, 181 NE2d 220, recognized that Judges are subject to psychological prejudice, based

[29] See Forensic Report by Dr. Ferro, 2002.

[30] A copy of her allegations, and the Decision on appeal, along with witness' testimony refuting the allegations can be seen on the Family Court file, attached to Respondent's

status, her name and her father's name. The Petitioner has been boldly making false allegations, precisely because the family court consistently swept under the rug the facts and witness' testimony, which only come to light on appeals, often after long years.

27) With his applications for teacher positions rejected due to the outstanding CPS Report against him in 2001-2005, Respondent was cleared of the Petitioner's false charges in 2005 and the CPS record expunged, but all he could find as a teacher by then was volunteer teacher's position in his son's parochial school, where he worked for 4 years, without a penny's compensation, but to his son's and other children's great benefit.

28) The undeniable preponderance of the evidence is that Petitioner's high-energy, vexatious effort to destroy Respondent's career, employment and job search has been a major factor that precipitated a catastrophic decline in his earning capacity and ability to find employment. As can be seen on the court's file, in 2001, petitioner in one month vindictively destroyed Respondent's business, which he built over 20 years of hard work as an IT professional: she denied him access to electronic Security Tokens (Secur-Id™), cell phones, beepers, contracts and essential business documentation without which he could do no work for his clients. The Examiner abused discretion by not noting in the "Findings of Fact" the destruction of Respondent's business, career, employment and employment prospects by Petitioner.

29) Respondent testified his former colleagues cycled his resumes through the remaining network of connections and contacts – to no avail, and by now all of them were unemployed. [49, 5-9].

30) Respondent raised his beloved son since birth. His son lived with the Respondent way over 50% of time, his Mother not wishing to see her son for long stretches, often longer than a month. The Child stayed with his father on all school closings and vacations, and when sick, as can be seen from the court file. This attempt by the family court to use the Respondent now – and on patently false pretexts – as a cash cow for a malicious mother, is unconscionable. It is especially unconscionable because the Petitioner is a 54-year-old banker with a good, steady salary of $40K/annum, plus bonuses and incentives, and the best in the banking industry benefits, while the 64-year-old Respondent is hopelessly unemployed, unable to pay for or obtain medical help for himself even in medical emergencies. These objections do not even begin to describe the human aspect of the pain and suffering inflicted on the son and father by a barrage of patently false allegations by the Petitioner.

II. "The Respondent has assets including real estate, bank accounts, and other assets including stocks, bonds, or an IRA account. His financial affidavit, dated July 20, 2009, listed monthly expenses of $8,063.00 monthly including his house and condo expenses." [31]

[31] Findings of Fact, hereuntoafter FF, Page 3.

This statement by the Examiner is as patently false as her false assertion that Respondent and Petitioner "are husband and wife"[32] and that Respondent is liable by "virtue of marriage." [33] The vague and ambiguous wording of this statement reveals that the Hearing Examiner knows it is bogus on its face, yet she tries to create a false impression. The Examiner makes such statements – which are patently false – to create an impression that she properly used discretion in imputing income to the Respondent, probably in hope that by the time he reads the order (deliberately concealed from him) it will be too late or too difficult to rectify the so contrived "legal reality."

1. Respondent and Petitioner both testified that the "real estate" was in possession of the Trustee, that Trustee has sold the house and the condo was awaiting closing [40, 9-12] (both sold in December 2009.) The Examiner assertion that Respondent has "real estate" is false on its face. In regards to when the money, if any, from the sale of the real estate conducted by the Trustee may be received, Petitioner herself testified, "***I was told it can take up to three years***.*"[38, 22-24.]* The Respondent testified the real estate was sold, he had no access to any proceeds, and his life savings were exhausted [40]. On what – other than her partisan creative imagination – did the Examiner base her "Findings of Fact?"

2. **The second sentence above offers Respondent's large expenses (as of July-20th, 2009) as 'proof' of his ownership of condo and the house.** In light of the testimony at the hearing that the Petitioner paid for the properties until they were in contract to sell, on which he exhausted his life savings, the Examiner should not have used high expenses as "proof" of property. High expenses only prove the high rate at which Respondent's resources were being exhausted. The Examiner's claim that high expenses prove "assets" is but intellectual dishonesty. Respondent's liabilities were higher than his assets.

In her 2004 Bankruptcy, petitioner GR specifically claimed to the Trustee she had no interest in Mr. R's real property in her divorce. Simultaneously, she asserted and received 50% interest in his properties in the divorce court. Petitioner GR "gamed" the two courts. She also lied under oath at this Dec-7, 09 hearing when she stated that she informed the Divorce court of her Bankruptcy [32,10-25], [32, 23-25] as the transcripts of the divorce show, she did not. Her actions resulted in Respondent's resources and life-savings being wasted between 2004 and the end of 2009, when the trustee finally made the sale.

Petitioner received 50% of the Respondent's real estate in the divorce, based on a prenuptial agreement, which the divorce court enforced. The prenuptial agreement predicated distribution of property on the condition of 50% physical custody of the child and no support moneys changing hands. The "Findings of Fact" and "Order" by the Examiner is but an illustration to the Respondent's assertion in the custody proceeding that Petitioner's claim for custody is but a back-door quest for more money, which the Respondent at this point does not have. The Prenuptial must and will be enforced.

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[32] FF, Page 1.
[33] FF, Page 1.

1. By operation of judicial estoppel, the Trustee took possession of Petitioner's windfall, which she went to great lengths to conceal from the bankruptcy court. The Trustee became the co-owner. The Trustee took 6 years to sell, and sold at arguably the very bottom of the real estate market in December of 2009. The sale occurred only after Respondent's life-savings were drained to zero on maintaining the real estate in good standing (mortgage, taxes and maintenance) and related litigation. Meanwhile, as she testified, Petitioner stayed in the Condo. She refused to move staying there illegally [32, 7-9], while Respondent had no choice but to pay for the properties to comply with the divorce decree, unable to sell them unless the Trustee initiated the sale.[34] Thus, having come to the 2 courts with unclean hands, Petitioner profited from her fraud, by some $280,000 which Respondent had to spend meanwhile to maintain the Condo.

2. It is clear from the Transcript [33, 4-25] that the Examiner acted as Petitioner's advocate, not an objective Arbiter and Trier of Fact. Examiner lead the Petitioner practically putting words into her mouth:

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Q Did the trustee in the bankruptcy court repossess your interest in said real estate?
A Yes, he did.
Q Did he also take over control of the real-estate properties from me?
GR: Your Honor, I don't understand these questions.
THE COURT: Okay. Sir, just rephrase it.
ER: Okay, I'll rephrase. I will rephrase.
Q Could I sell those properties without his permission?
THE COURT: **Could you sell the properties without?**
ER: **Without the permission of the trustee.**
THE COURT: **All right. Are you able to answer that?**
A I assume.
THE COURT: Do you know the answer? [!!!]
GR: No.
THE COURT: Then you just answer, I don't know.
A I don't know.
THE COURT: Fine. Next question.

(Q – ER; A – GR, emphasis added.)

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The court's advice to the Petitioner throughout the hearing and partisan advocacy are too apparent to ignore. Petitioner, with 2 Master's degrees, and training in legal aspects of estates and trusts, [35] is acting here as if she does not understand a simple question, and does so – quite apparently – on the court's advice, the court acting in this case as counsel to a party and a partisan advocate.

4) Petitioner alleged, that some $60,000 was released to Respondent [53, 13-17]. She went as far as sending to the Examiner an ex-parte letter **dated May-12, 2010,** with a false written statement ***"I've been informed by my bankruptcy attorney that the proceeds of***

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[34] This information is on file; see, e.g.
[35] She passed Series 7 as part of her training, which covers legal and financial aspects of estates and trusts.

the sales of both properties have been released from the escrow. In light of this information, I do not believe it is fair to allow Mr. R to receive free counsel…" The Petitioner said the truth… but as always -- about the least relevant part. The money indeed, was released… to the Trustee, not the Respondent.

5) Petitioner lied under oath at the hearing that there was a court order directing her to stay in the Piermont property Scott-free, (while setting Petitioner back some $206,000 in direct expenses for the mortgage, taxes and maintenance, and another $75,000 resulting from her deliberately vandalizing the property, on 3 separate occasions, while occupying it illegally. The Examiner confirmed no such order existed by consulting the judgment of divorce [31, 13-25], [32, 1-15]. The Examiner ignored the facts of destruction of Respondent's "resources" by the Petitioner, nonetheless.

6) Petitioner vandalized the condo 3 times, each time coinciding with her allegations in the family court, forcing Respondent to rebuild the bathrooms from scratch twice within a space of 3 years, the beams, floors, walls, ceilings, fixtures, plumbing, the works. She demanded repairs for the last major flooding of "unknown origin," which occurred – not surprisingly – during the September 2009 family court proceedings. Now that she's gone, there are no plumbing or flooding problems reported in the Piermont condo, whatsoever, although nothing was fixed or changed.

7) Respondent testified that as a result of these expenses, he had $12,000 left to his name in Dec-2009. By the issuance of the Order and as of the time of this writing he has no income, no money and no credit. Respondent had to apply for SSI, which he has not received yet. The CSC already intercepted his CSI, based on the Examiner's Order of Support, hereby being objected. The Examiner implied that Respondent's high expenses equaled "resources," which is faulty logic, at best.

III. Referring to a particular e-mail between Dr. R and Ms. Bernadette McHugh, a local headhunter (38.eml in Exhibit C), the Examiner attempts to cast doubt on the quality of Respondent's entire job search, which, as he testified and is evidenced by the sampling in Exhibit C (Job Search), included thousands of e-mails,[44,1-2] registration with all of the major employers' recruitment sites in NYC Metro area [40, 20-22] and on national job search sites [47, 20-25], [48, 1-20].

To use one e-mail out of thousands, even if the Examiner's criticism were true (but it is false) would be a stretch. But the Examiner misunderstood and misinterpreted the very essence of said e-mail: she mistook the inline color-coded comments in the e-mail cycled back and forth several times for the original text (the printout was black and white) thus completely misreading the text.

Thus, the Examiner stated in her "Findings of Fact," falsely: "**In a letter he stated he had ten years experience as VP at Enhance but his clarification listed his VP from 1992 to 1997 for five years**."

Let's see what Petitioner's initial e-mail of Saturday, November 7, 2009 really stated (35.eml, Exhibit C.)

From: "ER" <eXXXphd@verizon.net>
To: <bmYYY@pinnacleus.com>
Sent: Saturday, November 7, 2009 9:05 AM
Attach: ER BA.doc; ER BA.pdf
Subject: BUSINESS ANALYST (Business Objects or Insurance/Data Extraction)

<<Dear B. McHugh,

I have 10 years experience at Enhance Reinsurance Company and managed a number of complex projects in insurance and other industries.

I finished my MBA in Finance in 2004, in addition to an earlier PhD in information technologies.

I expect to earn about $60K base salary.

I am a local candidate living in Valley Cottage, within 30-minutes from White Plains.

My resume is attached.

Sincerely,

ER
845-268-5565 >>

Not only did the Examiner fail to read the original e-mail, or understand the meaning and placement of the in-line comments, the Examiner's critique is misplaced: In the very first, opening sentence the Headhunter (Ms. Bernadette McHugh) stated the one and only reason for a job mismatch: "**It is a much more junior position than the ones you've done… They want current (within the last 3 years) reinsurance experience." (38.eml)**

Clearly, the employer was looking for a "more junior" person, to which the Examiner chose to turn a blind eye and deaf ear. The Examiner is not privy to the phone discussions between Dr. R and Ms. McHugh, questions and answers, some of them color-coded, others – oral, in the exchange which went on between November 2008 and January 2009.

In all fairness to the Examiner, Exhibit C was a black-and-white printout, but the e-mail she quoted does contains a statement of the in-line comments, which should have alerted her: "**My in-line reply to you below is highlighted in red,**" which explains the "as VP" inserted 3 months later in red as an explanation to the headhunter's phone questions about where in the Reinsurance industry he worked as VP.

The Examiner further chose to exaggerate and obfuscate the date of Respondent's MBA, **"Bernadette McHugh… questioned the date of receipt of his MBA because he listed one year on a resume and another year in the e-mail."** As explained in said e-mail, Respondent's graduation ceremony was in June 2005, when he received his diploma and he continued to take courses in 2005, although his Diploma is post-marked 2004, the year he completed the MBA program. The e-mail in question was not even about employment, it was about staying in touch with the headhunter hoping for some Reinsurance jobs in the future. Reinsurance industry jobs went the way of Ambac (ABK), one of the largest bond insurers and the proxy for the Reinsurance Industry. The ABK stock went from $90 in 2007 to 69 cents on June-10, 2010 with rumors of its impending bankruptcy.

Respondent phoned Bernadette McHugh recently to opine on said e-mail exchanges. Needless to say, her opinion was quite different from that of the Examiner. She would testify, if need be.

It is not appropriate for the Examiner to come into the midst of such exchanges, electronic and telephonic, and – based on the fragments of the conversation, to which she was not privy, and which she very apparently completely misunderstood and eagerly misinterpreted.

"The Court finds the Respondent's job search was harmed by his own lack of veracity and precision." – The Examiner was mislead by in-line comments, which she mistook for original text. Hence, her analysis is simply invalid. To use a shabby analysis, the results of which are apparently wrong, of a single e-mail in order to cast doubt on his entire job search, which consisted of thousands of e-mails, demonstrates prejudice and inability to be objective.

Finally, it cannot be reasonably expected that the Examiner, who bases her decisions and calculations on the false premise that the parties are "still husband and wife" (which is either a deliberate misrepresentation or an unforgiveable mistake) would have the skill or attention span to understand and interpret objectively a contemporary e-mail with in-line comments, which would take an Internet expert to interpret.

The Examiner's statement, **"The Respondent did not mention that he had an MBA"** is false on its face: The Examiner apparently knows that Respondent has an MBA, prominently featured in his Exhibit C, so her claim he "did not mention it" demonstrates her prejudice. The Hearing Examiner did not ask, nor did she give the Respondent an opportunity to "mention" much in his oral testimony, except for answers to her direct and leading questions, limiting his testimony to what she wanted to hear and directed him to say: "***just testify to what I say you can testify to."*** **[49, 1-3].** In fact, just as he was about to testify about his MBA [40,25; 41,1] the Examiner interrupted him, mid-sentence, as she did throughout his testimony.

"Petitioner has the ability to earn $38,022.40 annually." Petitioner, however, testified she was earning at least **"$40,000 a year**" in salary alone [24,11-12; 27,12-13], plus could earn additional incentives and bonuses, not 38K as the Examiner under-stated. This begs a question as to why Examiner understates Petitioner's Gross Income, while imputing to the Respondent an off-the-wall income, while she knows that he is unemployable at his age, in

today's economy, and after the Petitioner's consorted efforts to derail his career, and downright broke. [03/04/2010 p7, 3-4]

Not only did the Examiner understate Petitioner's Income of $40K, the Examiner did not take into account additional resources available to the Petitioner's household: The Petitioner's 25-year-old son Jack, a 2007 graduate of Mercy College, works in Nyack hospital, and has lived, according to petitioner, until November-1, 2009 with her. Upon information and belief, he continues to reside in his mother's household. In order to assess Petitioner's true financial condition, household income and expenses, or to establish that Jack truly lives on his own, he should provide residential utility bills, going back to the time of the Dec, 2009 hearing, or his contribution should be assessed on the basis of his 2009 tax return. Respondent testified and Petitioner affirmed that her live-in boyfriend has a mansion on New Jersey and another – on Cape Cod, Massachusetts where the Petitioner spends vacations and holidays. Respondent has no doubt the Examiner would have fully explored this additional source of household income, had the gender roles of the Respondent and Petitioner were reverse.

Not only did the Examiner base her calculations on the false assumptions that they are "husband and wife," but Petitioner's Health Insurance Premiums benefit both the Child and the Petitioner. Why should Respondent pay for the Petitioner's medical insurance?

The only support obligation based on the facts of this case is statutory minimal obligation. In reality, Respondent is already paying to his beloved son $969[36] monthly, through Respondent's -earned SSA, much more than the statutory 17% of any income he might have obtained , had he been younger and under better economic conditions. The Child's resources going forward shall exceed those of the Respondent who must pay for his dwelling, which in Rockland County is at least $1150 / month. Meanwhile, **based on the falsities in the Examiner's "findings of Fact" and Order of Support,** and the Support Magistrate's refusal to consider an Application for Modification (she tore it up angrily at the hearing on 12/07/2009) the CSC intercepts almost all of the Respondent's SSA check, forking over **to the Petitioner $1931**, in Child Support, while **leaving the Respondent $641 a month to live on**.

Appellate Division Second Department held that:

> "in exercising the discretion to impute income to a party, a Support Magistrate is required to provide a clear record of the source from which the income is imputed and the reasons for such imputation' [citation omitted]" (Matter of Barnett v Ruotolo, 49 AD3d 640, 640, 854 N.Y.S.2d 155; *see also* Matter of Genender v Genender, 40 AD3d 994, 836 N.Y.S.2d 291). A sufficient record is necessary as the imputation of income "will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise [*4] of discretion" (Matter of Ambrose v Felice, 45 AD3d 581, 582, 845 N.Y.S.2d 411). **Here, the Support Magistrate… did**

[36] While ostensibly CS is to benefit the Child, it is nobody's secret that it benefits the Mother, who in this case never once in all these years took care of the Child when he was sick (except for ostentatious "care" after she procured for her herself custody in 2009 on false allegations.)

not specify the source from which such income might have been derived, and failed to give any reason for the imputation of income."[37]

The examiner signed the Findings of Fact on February-28, 2010. The Order was not entered, however, until April-19, 2010, almost 2 months later. The Order and "Findings" were not served upon the Respondent, even despite his multiple inquiries and direct requests for copies of said documents. The Order was retroactive to June-2009, imputing to him more in Child Support monthly than he was able to earn on average since 2001. The Respondent sees a discernable pattern to prejudice his by concealing from him, and thus "legitimizing" the prejudiced, unjustifiable order.

Respondent is in poor health, has no medical insurance and is 5 years older than the life expectancy for men, which stands at 58 years 11 months[38] in the country[39] from which he immigrated in 1982 as a refugee, formerly a Soviet dissident. As he testified on 04/01/09, his 65-year-old sister died in 2009. The Examiner's order, deliberately – and with no justification – imputing an off-the-wall income to a retired man, is an attempt to rob him of the last year(s) of his life; it is a partisan and vindictive attempt to put an old man out on the street or into the county jail for non-compliance with her deliberately falsified order of support. Such activism must not be tolerated. It is unconscionable on its face.

The Examiner's "Findings of Fact" are false from the very opening statement to the very last. An "Order" based on fantasy with no foundation in fact or reality may not be deemed "just" or "proper."

The Support Magistrate's Order is unjust and improper and must be reversed. Any delays in reversing the order perpetuate the injustice and continue to expropriate – on false pretenses of a lawfully issued court order, under the color of law – the lion's share from the Respondent's meager SSI funds. This is social injustice personified and must be stopped.

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[37] *In the Matter of Graveness v Marchese*, 2008 N.Y. App. Div. LEXIS 10276,*;2008 NY Slip Op 10623;57 A.D.3d 992;870 N.Y.S.2d 444

[38] "the average life expectancy for Russian men is less than 59 years - 58 years and 11 months," http://www.cdi.org/russia/johnson/7023-14.cfm

[39] According to the actuary data by Errold F. Moody Jr., PhD, LLB, MSFP, MBA, BSCE, Life and Disability Insurance Analyst, Registered Investment Adviser, life expectancy is 57 years for men born in 1996 Russia. (The Respondent was born in 1947 and lived in Russia until age 36.) http://www.efmoody.com/longterm/lifespan.html www.efmoody.com