



Catherine Wilson, Bureau Chief



Northern Westchester

Joe Pisani, Disbarred and Convicted Felon, Keeps Trust Funds Of Disabled Child From Helping Her

Two weeks ago, the *Guardian* reported on how a disgraced New York State Senator, Joseph Pisani, who was convicted and disbarred for fraud and embezzlement, was allowed to drain a special needs trust for a disabled child with the blessings and approval of our local courts. Not content with taking the \$2 million involved, Pisani has also continually refused medical and educational aid for the child, a refusal that had near-fatal consequences for the young woman.

Ann Masotti, the child's mother, sat with the *Guardian* last week and spent over three hours providing us with even more shocking details of her daughter's care under Pisani's trusteeship. Mrs. Masotti's daughter suffers from Asperger's Syndrome, a variation of autism. Asperger's has fewer brain abnormalities than autism, making it difficult to diagnose. Children with Asperger's are often initially misdiagnosed with learning disabilities, attention-deficit disorder, or as being bipolar. Mrs. Masotti and her late husband Vito experienced the frustration

This story should serve as a warning to all parents of disabled children in our County.

Setting up trusts and guardians for your childrens' care after your death does not protect your children from abuse by the very systems that have supposedly been established to protect them. The Special Needs Trusts you have set up may not be used for their needs but may end up, instead, lining the pockets of corrupt attorneys. The facilities and provisions you have carefully selected and dictated for their care may not be followed and your children may end up a ward of the state in inadequate, frightening facilities instead. The trustees you have appointed could be challenged and dismissed. In short, once you are dead, your disabled children could end up alone and unprotected, and, become a ward of the state at the mercy of our legal system; a system that the United States District Court referred to in 2007 as "the most corrupt in the nation".

of not knowing what was wrong with their daughter throughout her early childhood education as her disorder was continually misdiagnosed. However, both parents were keenly aware that their child had problems and despite being divorced, worked together to provide for her needs. When Vito Masotti contracted cancer, he set up a will and trust for his daughter with the help of a trusted family friend, appointing long-term family friends as

trustees and executors of his daughter's \$1.4 million Special Needs Trust. Any difficulties the young Ms. Masotti, however, experienced throughout her school years, were nothing compared to the problems she faced once her father died.

Shortly before his death, Vito's will was changed by convicted felon and disgraced ex-New York State Senator Joseph Pisani, who set himself up as executor of the estate and trustee of Ms. Masotti's trust fund despite be-

ing a disbarred attorney with no legal right to do so. Ms. Masotti was 19 at the time of her father's death, but due to her disability, her psychological and cognitive age was significantly younger. Therefore, it was not unexpected when Ms. Masotti suffered an emotional breakdown due to the traumatic changes in her life when her father died. Her mother, Ann Masotti, immediately investigated medical facilities for her daughter's care and selected a private facility. Unfortunately, since her daughter was now over the age of 18, due to HIPPA regulations, Mrs. Masotti no longer had any legal right to determine the medical care for her own child and had to seek guardianship of her daughter in order to continue to make decisions for her.

Normally, obtaining guardianship of a disabled person with Asperger's Syndrome is not a difficult process. Medical professionals agree that such individuals lack the cognitive ability to properly care for themselves and, unless there is any objection to the individual stepping forward as guardian,

Continued on pg. 16



Pisani, continued from page 2

establishing guardianship, especially on a temporary or emergency basis, is an uncomplicated process, and can often be accomplished in a single court appearance. Unless, of course, someone comes forward and objects to the ability and motives of the guardian; which is precisely what Joseph Pisani did.

Pisani had no intention of relinquishing the control he had wrestled over Vito Masotti's \$2 million estate, and saw Mrs. Masotti's request for guardianship of her own daughter as something that would undermine him. He therefore immediately challenged her in court which successfully stalled her appointment as guardian. By taking the unconscionable step of objecting to Mrs. Masotti becoming guardian of her own daughter, Pisani denied her the legal right to make emergency medical decisions for her handicapped child at that time. Mrs. Masotti, with the blessings and approval of Westchester Surrogate Court, was therefore prevented by Pisani from helping her child obtain the proper treatment she needed to recover from her emotional breakdown caused by her father's death.

The facility she selected had a successful program that could have helped her daughter through the difficult process of dealing with her father's death. Pisani, however, had no intention of spending \$10,000 a month on Ms. Masotti, even for a short term, \$10,000 that could end up instead lining his pocket. And Mrs. Masotti did not have the financial ability to pay for the medical care for her daughter herself. She thus needed the cooperation of a complete stranger, Pisani, and the funds from the trust intended to help her own child through this difficult period.

But Joseph Pisani refused to do anything for his young trustee, including his refusal to purchase health insurance to pay for her medical care. The doctors treating the fragile 19-year-old determined that she needed convalescent care to recover from her emotional breakdown. But without the ability to access the funds from her trust to purchase private health insurance or pay for a private facility directly, Ms. Masotti was utterly dependent upon Medicare and was instead tossed into a state hospital on a ward with convicted

rapists and murderers.

Her mother was naturally distraught at this treatment of her child but had no choice but to leave her job and stay at her daughter's side as long as possible every day. But, despite Mrs. Masotti's extended visits, her protection of her daughter was not enough. She was attacked several times during her stay in the state hospital by other patients. Even the Court's own *guardian ad litem*, in this case, James Meyer, testified to Judge Scarpino, that this facility was "not much different than a jail". He expressed his hope that Ms. Masotti would receive treatment "in a more home-like environment". Yet, despite this evaluation, Pisani did nothing to protect her, and Scarpino never issued a court order to override Pisani and remove Ms. Masotti to a safer facility.

Like most parents of a disabled child, Mrs. Masotti had become an expert on her daughter's disorders and was familiar with the all of the treat-

school, and she had 'her' horses".

All that tranquility and happiness ended with the death of her father. Since Mrs. Masotti had no choice but to be at her daughter's side in the state facility, she jeopardized her job on the estate and was eventually fired. By losing her job, Mrs. Masotti also lost the environment that her daughter had been thriving in. Once she was released from the state hospital, the young Ms. Masotti would not have her beloved horses to return home to. It was therefore even more urgent that the young Ms. Masotti receive the care she needed to recover and be able to deal with the now-multiplying changes in her life. Yet Pisani was still unmoved and continued to leave Ms. Masotti in the state hospital, a facility that was physically dangerous for her. And, Judge Scarpino did not intervene.

Throughout this entire period, the Courts continually ruled that Pisani's behavior was legally acceptable since it was "within his sole discretion" as trustee to determine how to spend money,

Over the past two weeks, this reporter has heard from many other victims. However, we have as yet to hear from anyone in the Court System as to what they intend to do about this abuse and how they will protect the innocent victims here. Why have they remained silent on this issue?

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ments and care available. Parents will try anything to help their disabled child live as normal a life as possible, even foregoing their own lifestyles and draining their own finances in the process. Mrs. Masotti was such a mother.

Upon discovering that her daughter reacted well to equine therapy, she took a job as a caretaker on a horse farm in Northern Westchester. The teenage Ms. Masotti worked part-time in the stables caring for the horses, a job she loved, and one which gave her an opportunity to be independent. Away from the judgmental eyes of the public, she was thriving in the tranquil surroundings, and started taking college courses. According to her mother, for the first time in her young life, Ms. Masotti had a future. "She was fully functional, and wasn't dependent on any medications when we were living on the farm," Ann told us. She went on to say, "My daughter was very happy. She had her own job, she was going to

or not, for Ms. Masotti's care. Not once did the Courts rule that Pisani had a fiduciary obligation as trustee to protect his young charge, even after she was physically attacked by the patients in the state facility. Since Pisani, in his 20-plus years in the New York State Senate, had influenced the appointments or ballot selections of many of our local politicians, judges, and even members of the District Attorney's office, no one in the Westchester Courts would oppose him, even when a disabled girl's life, and emotional health, was in danger. Not once did the courts ever ask why an attorney would use his discretion to place a disabled child in physical danger and override that decision. Not once did Judge Scarpino ever address the rights of the disabled child in this case.

Why didn't the rights of a disabled child succeed over the self-serving discretion of a disbarred attorney who was a convicted felon and who should have been prohibited from

even being a trustee to begin with?

What protections do our State courts give the disabled, if any? Is the *Americans With Disabilities Act* just a joke to our Westchester judges and lawyers? Or, are the trusts and funds set aside by family members for the care of their loved ones upon their demise just, as one court insider revealed to the *Guardian* this week, "a license to steal" by the corrupt lawyers in our midst since their victims can do little to protect themselves?

The Masotti case has stirred several responses to the *Guardian* from other victims of corruption in our courts. Sadly, young Ms. Masotti is not alone, and neither are the abuses limited to the disabled. Several local individuals who have lost their jobs in this recession and are now facing foreclosure told this reporter that they are also being preyed upon by unscrupulous attorneys who were appointed as foreclosure referees in their cases. These attorneys are now charging exorbitant fees for their "services", all with the blessing of the judges who appointed them since those appointments are often paybacks for the attorneys' campaign contributions to the judge!

In the "nudge-nudge, wink-wink" environment of our Westchester courts, court rules and state laws established to protect the disabled, the elderly, and the impoverished, are routinely ignored. New York State Court rules have set standards for fees charged in guardianship cases and when higher than average fees may be allowed, e.g. cases involving alleged sexual abuse which require specialized investigation. Since most of these cases involve minors or incapacitated individuals, it is generally unacceptable for attorneys to charge their usual rates of up to \$500 an hour; most local guardians charge \$125 - \$150 an hour to such individuals, even accepting \$75 an hour for court-paid cases for indigents. Yet, in every guardianship appointment in Ms. Masotti's case, Judge Scarpino allowed the attorneys to milk her estate at the rate of \$300 an hour, ignoring both court rules and acceptable legal ethical practices, and depleting her trust to the tune of \$28,000 in the process.

Worse, Scarpino allowed Pisani to pilfer Ms. Masotti's estate for what amounts to a blatant legal malpractice. In August 2007, Pisani paid al-

most \$85,000 in estate taxes on the estate of Vito Masotti. However, in accordance with Vito's will, the bulk of his estate was to have been set up in a Special Needs Trust for the care of his disabled daughter. Had Pisani established that trust, as instructed to, no estate taxes would have been owed on those funds at all! Yet Scarpino, and even the guardians appointed by the Court, failed to address this blatant malpractice and allowed Pisani to deduct \$85,000 from Ms. Masotti's funds for these taxes. Pisani did not do what he had been hired to do by Vito Masotti; set up the trust for Ms. Masotti, therefore, he was guilty of malpractice by not following his client's wishes, and should have been court-ordered to pay these taxes out of his malpractice insurance or his own pocket.

One of the problems faced by litigants in Surrogates Court and other courts, is the complete lack of financial, medical, and even legal knowledge by the players in this system. The Court does not mandate that only certified accountants may be allowed to account for the monies involved, instead opting to allow untrained lawyers to determine the investment, accounting, and tax strategies needed to maximize the financial potential and protection of the trusts; the equivalent of asking your dentist to perform open-heart surgery. The lawyers, who are appointed in Surrogate and in foreclosure cases often have no further credentials other than having contributed to the judge's campaign and often have zero training, knowledge or experience as to even how to account for the significant amount of money often involved, money that frequently represents the litigant's, or decedent's entire life savings.

Shouldn't foreclosure and trust funds be entrusted to financial experts, certified by independent organizations such as the New York State Certified Professional Accountants, and not selected based on the size of the attorney's campaign contribution checks to judges?

The court-appointed guardian's report, while empathetic to Ms. Masotti's plight in the state hospital, was completely naïve and incorrect when addressing the money involved. The guardian, James Meyer, acknowledged that Vito Masotti had "the foresight to place my ward's inheritance into Trust"

but never noted the improper payment of the estate taxes incurred because the trust was not established properly! Meyer notes that there was no money to pay for "a better treatment facility for my ward" because "the estate taxes had just been paid, and the Estate did not have much in the form of liquid assets". But he failed to note that the estate taxes should never have been incurred at all and that there was \$146,000 in various bank accounts and stocks and an additional \$51,000 in a life insurance policy, enough to cover 20 months in the private facility for Ms. Masotti's care if need be. Yet Meyer never pursued what became of these funds or even acknowledged he was aware of their existence in his inaccurate and incomplete financial reporting.

In his ignorance, Meyer described Pisani's accounting of the trust as "simple but straightforward". He went so far as to say, "He shows all of the income coming in and checks going out". **What Meyer is describing is merely a check register, not an accounting!** If Meyer had any financial training whatsoever, and was truly qualified to analyze trust expenditures and investments, he would have known that a full and complete accounting for a Trust contains the following:

- A copy of the Estate Tax return
- A copy of the Fiduciary Tax returns
- A listing of all assets of the descendant at the time of death, separately listed
- All bank statements for both personal and business accounts including cancelled checks or copies of both the front and back of each check, and details of all deposits
- Details of all bills paid including invoices from vendors and suppliers
- Copies of all 1099's issued to individuals
- Loan and retainer and any other professional agreements
- All details of loan activities including the initial loan agreement
- Purchase, escrow, transfer and closing documents on any assets purchased or disposed of, the dates of all transactions and names of all individuals involved
- Dates and amounts of each rent collection and copies of all leases for each tenant and details of evictions



- A copy of all insurance policies and proof of current payments
- A running balance of the funds in each account and a separate monthly reconciliation for each account and asset held by the trust
- A copy of all correspondence, court orders, etc. committing the trust to any legal, financial, or other obligation

This reporter is a certified accountant and a trustee for a Special Needs Trust.

Instead of performing the *due diligence* required for the protection of this ward's trust to determine the validity of the reports and the protection of the assets, Meyer incredibly agreed with Pisani's assessment that "if the property is sold and the proceeds invested prudently, the return should be about 10% to 12%" and claimed that he found this assessment "to be a rational belief". Really?

We ask, upon what financial and investment analyses does Mr. Meyer base such "rational belief"? Most financial planners, before the current recession, would have used the average annual rate of return for the stock market of 7% as their estimate for probable returns. But Pisani and Meyer, neither of whom are licensed financial planners, speculated that they could outdo the experts and achieve 10% to 12%. With whom, Bernie Madoff?

Yet Judge Scarpino accepted such unsubstantiated analyses as gospel to determine the fate of a disabled child's trust because he allowed Pisani to pursue selling the apartment building that was bequeathed for Ms. Masotti's care in her father's estate. **This building has since been sold and Judge Scarpino has yet to order a full accounting of the proceeds of the sale and the balance in the trust funds.**

Sadly, the saga of Pisani's dealings with our Surrogate Court under Judge Scarpino, since his disbarment and conviction, and that Court's ineptness in protecting the rights of the disabled and litigants is not limited to Ms. Masotti's case; not by a longshot. The *Guardian* has learned that Pisani has been allowed to apply his name to commercial tax certiorari cases in the Westchester Courts over the past several years for individuals who are not attorneys and are not legally allowed to perform this work. They use Pisani to 'rubber-stamp'

his name on hundreds of these cases to give them an appearance of legitimacy, even though, as a disbarred attorney, Pisani himself was prohibited from using his law license until January of 2008. Why did any of the judges in the Westchester courthouse accept Pisani's signature on even a single case?

The answer lies with who is appointing him. In the past several years, Pisani has been appointed as a referee in discovery issues by Westchester judges 13 times, and as a foreclosure referee 65 times by Judge Dennis Donovan, Judge Louis Barrone, Judge John DiBlasi, ex-administrative judge Aldo Nastasi, ex-Westchester County Executive, Judge Andrew O'Rourke, and even by the current Administrative Judge, Francis Nicolai. For the past several years, the Westchester Courts have entrusted over \$13,000,000 in foreclosure victims' funds to a convicted felon, a *disbarred* attorney, who was not even legally allowed to handle foreclosure cases to begin with! **How possible would it have been for any ethical judge to stop Pisani, when the Administrative Judge, himself, was one of the individuals doling out appointments to him?** Pisani's influence extends even beyond the courthouse. Since 2001, Pisani has been routinely invited by Professor Gary Casella, of the Pace University School of Law, and the Grievance Committee, to be a guest lecturer to Pace law students on the topic of, you guessed it, ethics! Is there any hope for our legal system when our upcoming young lawyers are being trained by a disbarred attorney who is a convicted felon?

Is there any help or recourse at all for those who fall prey to these corrupt individuals? As we asked in our first article on this subject, **"What do you do if the individuals assigned to protect your child, the lawyers and the courts, are the ones who are victimizing them?"**

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