Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D24736
O/kmg

_____AD3d_____ Submitted - September 29, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL, JJ.

2008-05630 DECISION & ORDER

In the Matter of the Estate of Alfred D. Rappaport, etc., et al., appellants, v John B. Riordan, etc., respondents.

(Index No. 18803/07)

Lori Rappaport LaCroix, Sylvia Rappaport, Courtney LaCroix, and Hunter LaCroix, Delray Beach, Florida, appellants pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and Laura R. Johnson of counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to "vacate" a decree of the Surrogate's Court, Nassau County (Riordan, S.), dated November 15, 2005, which, after a trial, among other things, was in favor of Marguerite Downs Rappaport and against the estate of Alfred D. Rappaport in the principal sum of $65,000, based on a promissory note executed by the decedent in that amount, the petitioners appeal from a judgment of the Supreme Court, Nassau County (Lally, J.), entered May 27, 2008, which, in effect, denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

A CPLR article 78 proceeding may not be used to seek review of issues that could have been raised on direct appeal (*see* CPLR 7801[1]; *cf. Matter of Wong v Chetta*, 271 AD2d 451; *Matter of Tyler v Forma*, 231 AD2d 891; *Matter of Sans v Doyle*, 175 AD2d 670, 671). Here, the petitioners failed to appeal from the underlying decree and may not obtain collateral review of the issues which could have been raised on direct appeal from the decree (*cf. Matter of Sans v Doyle*, 175 AD2d 670). Therefore, the proceeding was properly dismissed (*cf. Matter of Wong v Chetta*, 271

AD2d 451).

The petitioners' remaining contentions are without merit.

MASTRO, J.P., FISHER, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court