

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

D31486
C/prt

_____AD3d_____

Argued - May 5, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-04404

DECISION & ORDER

In the Matter of Edmond Winters, deceased.
Kevin Winters, respondent; John E. Lawler,
appellant.

(File Nos. 723/09, 723B/09)

John E. Lawler, Yonkers, N.Y., appellant pro se.

Diviny & Merchant, P.C., Pearl River, N.Y. (Joy D. Diviny of counsel), for
respondent.

In a proceeding commenced by Kevin Winters pursuant to SCPA 1001 to obtain letters of administration for the estate of Edmond Winters, in which John E. Lawler cross-petitioned pursuant to SCPA 1407 to admit a copy of a lost will of Edmond Winters to probate, John E. Lawler appeals from an order of the Surrogate's Court, Westchester County (Scarpino, Jr., S.), dated April 9, 2010, which denied his motion to compel the Clerk of the Surrogate's Court, Westchester County, to accept his demand for a jury trial.

ORDERED that the appeal is dismissed, with costs to the petitioner payable by the appellant personally.

The appeal from the order dated April 9, 2010, must be dismissed because the right of direct appeal therefrom terminated with the entry of the decree in the proceeding (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order dated April 9, 2010, are

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brought up for review and have been considered on the companion appeal from the decree (*see Matter of Winters*, _____AD3d_____ [Appellate Division Docket No. 2010-08560; decided herewith]).

COVELLO, J.P., CHAMBERS, LOTT and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court