

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

571

**CA 15-01429**

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, CURRAN, AND TROUTMAN, JJ.

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IN THE MATTER OF THE ESTATE OF ERNEST EARL  
COWELL, DECEASED.

MEMORANDUM AND ORDER

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ERNEST COWELL, FORMER ADMINISTRATOR OF THE  
ESTATE OF ERNEST EARL COWELL, DECEASED,  
APPELLANT;

TERRI ROSS, ALLEGANY COUNTY TREASURER, PUBLIC  
ADMINISTRATOR, GLORIA LOUK, ET AL., RESPONDENTS.

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GERALD J. VELLA, SPRINGVILLE, FOR APPELLANT.

ALAN L. SPEARS, ALLEGANY, FOR RESPONDENTS GLORIA LOUK, WILLIAM H.  
COWELL, ALFRED COWELL, NORMAN COWELL, VIVIAN CARPENTER, DARLENE HALL,  
DIANE MORRISON, KATHY WHITE, CHARLES GEE AND PATRICIA LIBKA.

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Appeal from an order of the Surrogate's Court, Allegany County  
(Thomas P. Brown, S.), entered October 15, 2014. The order denied the  
motion of appellant to confirm his bid for an oil and gas lease.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Ernest Cowell (appellant), the former administrator  
and one of the beneficiaries of the estate of Ernest Earl Cowell  
(decedent), appeals from an order that denied his motion to confirm  
his bid to purchase a certain oil and gas lease owned by the estate.  
The bidding process was purportedly settled by stipulation of  
settlement, the terms of which were placed on the record before  
Surrogate's Court. Appellant tendered a bid to purchase the lease  
pursuant to his understanding of the stipulation. The Surrogate,  
however, held that there was no enforceable stipulation. We affirm.

Contrary to appellant's contention, the stipulation of settlement  
placed on the record in open court did not bind the parties. First,  
the stipulation of settlement did not meet the requirement of being  
"definite and complete" inasmuch as some of its material terms were  
not finalized in open court (*Town of Warwick v Black Bear Campgrounds*,  
95 AD3d 1002, 1003; see *Diarassouba v Urban*, 71 AD3d 51, 55-56, *lv*  
*dismissed* 15 NY3d 741). Second, and perhaps more important, the  
"[stipulation of] settlement was expressly conditioned" on counsel for  
all parties obtaining client approval in writing (*Rivera v Triple M.*  
*Roofing Corp.*, 116 AD2d 561, 561; see *Matter of Brooks v Brooks*, 255  
AD2d 382, 382; *Batties v Solis*, 171 AD2d 529, 530; *cf. Bella Vista*

*Dev. Corp. v Estate of Birnbaum*, 85 AD2d 891, 891-892, *lv dismissed* 55 NY2d 608, 55 NY2d 1038). The record establishes, however, that appellant himself never fulfilled that condition by giving his approval in writing.

Entered: June 17, 2016

Frances E. Cafarell  
Clerk of the Court