*State of New York*
*Supreme Court, Appellate Division*
*Third Judicial Department*

Decided and Entered: November 12, 2026 CV-25-1603

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In the Matter of the Estate of
DAVID HOWANSKY,
Deceased.

TIMOTHY HOWANSKY,
Appellant;

MEMORANDUM AND ORDER

DAVID HOWANSKY JR. et al.,
Respondents,
et al.,
Respondent.

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Calendar Date: September 10, 2026

Before: Aarons, J.P., Reynolds Fitzgerald, Fisher, Powers and Mackey, JJ.

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*Timothy Howansky*, Ballston Lake, appellant pro se.

*Tabner, Ryan & Keniry, LLP*, Albany (*Eric N. Dratler* of counsel), for David Howansky Jr. and another, respondents.

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Fisher, J.

Appeal from an amended decree of the Surrogate's Court of Saratoga County (Tatiana Coffinger, S.), entered October 31, 2024, which partially dismissed petitioner's application, in a proceeding pursuant to SCPA article 14, for, among other things, letters testamentary.

In 2013, David Howansky (hereinafter decedent) executed a will devising his estate to his children: petitioner, respondent David Howansky Jr. (hereinafter Howansky) and respondent Ruth Powell. Decedent also nominated petitioner as the executor and Howansky as the successor executor. Decedent died in 2021 and petitioner commenced a proceeding to probate decedent's will and for letters testamentary. Respondents consented to the probate of the will, but filed objections alleging that petitioner lacked the qualifications necessary to serve as executor on the grounds of hostility, want of understanding and dishonesty. Following a hearing, Surrogate's Court admitted decedent's will to probate on consent, denied the request to appoint petitioner as the executor and ordered that letters testamentary be issued to Howansky as the successor executor. Petitioner appeals.

Initially, respondents contend that this appeal is now moot because Howansky resigned as successor executor and Surrogate's Court issued a subsequent order appointing an independent fiduciary to serve as the executor. We find this contention to have merit. Our jurisdiction "extends only to live controversies and, as such, an appeal will be considered moot unless an adjudication of the merits will result in immediate and practical consequences to the parties" (*Blue Casa LLC v Menn*, 250 AD3d 1308, 1308 [3d Dept 2026] [internal quotation marks and citations omitted]; *see Matter of Association of Motor Veh. Trial Attorneys, Inc. v New York State Dept. of Motor Vehs.*, 223 AD3d 948, 949-950 [3d Dept 2024]). In his appeal, petitioner expressly disclaimed any challenge to the findings of fact contained in the underlying order from Surrogate's Court that found him to be ineligible to receive letters testamentary, and rather challenged Surrogate's Court's authority to appoint Howansky as the successor executor. Since Howansky is no longer the executor and because an exception to the mootness doctrine does not apply here, adjudication of the merits will have no consequences to the parties and, therefore, we dismiss this portion of the appeal as moot (*see Barnhart v Kingston NH Operation LLC*, 249 AD3d 1284, 1285-1286 [3d Dept 2026]; *Matter of Hoyt v Figueroa*, 246 AD3d 1172, 1174 [3d Dept 2026]).

To the further extent that petitioner raises several other challenges to the propriety of Surrogate's Court's admission of the will to probate, we conclude that he is not an aggrieved party because he consented to the admission of decedent's will (*see Matter of R.A. [A.R.]*, 45 NY3d 1005, 1005 [2026]). Since his contentions related to the issuance of letters testamentary have no bearing on the admissibility of the will to probate (*see Matter of Krom*, 86 AD2d 689, 689 [3d Dept 1982], *lv dismissed* 56 NY2d 807 [1982]), petitioner has obtained all the relief that he sought in his petition and has no basis to take an appeal (*see T.D. v New York State Off. of Mental Health*, 91 NY2d 860, 862 [1997];

*Matter of Dolomite Prods. Co., Inc. v Town of Ballston*, 151 AD3d 1328, 1331 [3d Dept 2017]). Accordingly, the remaining contentions of his appeal must also be dismissed (*see Matter of Kosmo Family Trust [Wieland-Savino]*, 176 AD3d 1465, 1466-1467 [3d Dept 2019]; *Matter of Badruddin*, 152 AD3d 1010, 1015-1016 [3d Dept 2017], *lv dismissed* 30 NY3d 1080 [2018]; *see generally Matter of Woodside Manor Nursing Home, Inc. v Zucker*, 223 AD3d 94, 98 n 3 [3d Dept 2024], *lv dismissed* 41 NY3d 991 [2024], *lv denied* 42 NY3d 907 [2024]). The parties' remaining contentions have been considered and found to be without merit and rendered academic.

Aarons, J.P., Reynolds Fitzgerald, Powers and Mackey, JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court