

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

M88698  
E/sl

STEVEN W. FISHER, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2008-04227

DECISION & ORDER ON MOTION

In the Matter of Frances E. Francis, deceased.  
Donald Maloney, appellant; William Mueller,  
et al., respondents.

(File No. 433/03)

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Motion by the appellant to recall and vacate so much of a decision and order on motion of this court, entitled "In the Matter of the Dismissal of Causes for Failure to Perfect - November 2008 Calendar," dated December 8, 2008, as dismissed an appeal from a decree of the Surrogate's Court, Westchester County, dated April 3, 2008, pursuant to 22 NYCRR 670.8(e) for failure to timely perfect, to reinstate the appeal, and to enlarge the time to perfect the appeal.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

FISHER, J.P., MILLER, LEVENTHAL and HALL, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

June 29, 2009

MATTER OF FRANCIS, DECEASED