STATE OF NEW YORK
SUPREME COURT   COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

ACTION NO. 1

Index No. 315-08

Hon. Richard B. Meyer

STATE OF NEW YORK
SUPREME COURT   COUNTY OF ESSEX

ADIRONDACK PARK AGENCY,

Plaintiff,

-against-

LEWIS FAMILY FARM, INC., SALIM B. LEWIS
and BARBARA LEWIS,

Defendants.

ACTION NO. 2

Index No.: 332-08

Hon. Richard B. Meyer

REPLY MEMORANDUM OF LAW IN SUPPORT OF JUDGMENT ON THE LEWIS FAMILY FARM'S ARTICLE 78 PETITION, IN SUPPORT OF THE MOTION TO DISMISS THE AGENCY'S DUPLICATIVE ENFORCEMENT ACTION, AND IN OPPOSITION TO THE AGENCY'S MOTION TO DISMISS THE PETITION

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PRELIMINARY STATEMENT

This is an action in which the Adirondack Park Agency (hereafter "Agency") is improperly seeking to secure jurisdiction over farm worker housing constructed on farmland by the Lewis Family Farm, Inc. (hereafter "Lewis Family Farm").

For the reasons set forth herein, the Lewis Family Farm respectfully requests an order annulling and vacating the Agency's March 25, 2008 enforcement determination in this Article 78 proceeding (Index No. 315-08), and denying the Agency's motion to dismiss the Petition. Further, defendants Lewis Family Farm, Salim B. "Sandy" Lewis and Barbara A. Lewis request an order dismissing the Agency's duplicative enforcement action (Index. No. 332-08).

ARGUMENT

POINT I

THE AGENCY'S EXTRANEOUS AFFIDAVITS MUST BE STRICKEN SINCE THEY ARE NOT PART OF THE ADMINISTRATIVE RECORD

CPLR 7804(e) only allows the respondent-agency to file answering affidavits for the sole purpose of showing evidentiary facts that would require a trial on an issue of fact. Further, it is well-established that in an Article 78 proceeding, "judicial review of administrative determinations is confined to the facts and record adduced before the agency." Matter of Featherstone v. Franco, 95 N.Y.2d 550, 554 (2000); Yarbough v. Franco, 95 N.Y.2d 342, 347 (2000); Basile v. Albany Coll. of Pharmacy of Union Univ., 279 A.D.2d 770, 772 (3d Dep't 2001).

In Basile, the Third Department upheld the lower court's refusal to consider an affidavit offered as part of its answer to the Article 78 proceeding because the affidavit was not part of the administrative record that formed the basis for the administrative determination. Basile, 279 A.D.2d at 772; see also Matter of City of Saratoga Springs v. Zoning Bd. of Appeals of the Town

of Wilton, 279 A.D.2d 756, 760 (3d Dep't 2001) (upholding lower court's refusal to consider reports that were not before a planning board when it made its decision); Matter of Raqiyb v. Couglin, 214 A.D.2d 788, 789 (3d Dep't 1995) (refusing to consider a document that was not evidence at the administrative hearing).

Here, the Agency has offered the Affirmation of John F. Rusnica, dated June 13, 2008, the Affirmation of Paul Van Cott, dated June 13, 2008, and the Affirmation of Loretta Simon, dated June 13, 2008 in support of its motion to dismiss the Lewis Family Farm's Article 78 Petition. None of these affirmations was submitted for the purpose of showing evidentiary facts that would require a trial on an issue of fact as required by CPLR 7804(e).

Further, none of these affirmations are offered in opposition to the motion to dismiss made by the Lewis Family Farm, Salim "Sandy" B. Lewis, and Barbara A. Lewis. To be sure, the Agency's time in which to oppose that motion expired on June 12, 2008.

Moreover, the affirmations of Paul Van Cott and Loretta Simon contravene this Court's directive of May 30, 2008 by containing nothing more than drawn-out procedural drivel that has been previously stated in the record before the Agency and this Court on numerous occasions.

Accordingly, this Court should not consider these affirmations and should limit its review to the facts and record that were before the Agency when it made its March 25, 2008 Enforcement Determination ("Determination").

A. The Agency Grossly Mischaracterizes The Rusnica Affirmation

The Agency endeavors to bolster its motion to dismiss with the Affirmation of John F. Rusnica, an associate attorney with the New York State Department of Agriculture and Markets. Since this affirmation is beyond the record and was not before the Respondent at the time the Respondent made its determination, it should be disregarded. See POINT I, *supra*.

Nevertheless, the Agency uses the Rusnica Affirmation to leap into hyperbole and gross misstatements of its content. To be sure, the Commissioner of Agriculture and Markets issued a binding, formal land use determination on February 1, 2008, finding that the cluster of three farm worker houses by the barns on the Lewis Family Farm was an agricultural "land use" under New York State's Right-to-Farm Law. (Record Doc. 11, Reply Affidavit of John Privitera, sworn to February 26, 2008, Ex. A). However, the Determination challenged here does not reference or distinguish the Commissioner of Agricultural and Markets formal February 1, 2008 findings. It ignores them. The Agency, having failed to find a way around the Commissioner's land use determination under New York State's Right-to-Farm Law, claims that the Rusnica Affirmation:

- establishes that the Lewis Farm does not have a cause of action against the APA;
- establishes that the Commissioner's opinion does not affect the jurisdiction of the APA over the Lewis farm worker housing;
- establishes that nothing in Agriculture and Markets Law § 308 suggests that Commissioner opinions are binding on another state agency;
- establishes that the Agriculture and Markets Law does not provide for preemption of other State agencies' statutes.

(See Agency's Memorandum of Law, dated June 13, 2008, pg 26).

The Rusnica Affirmation does not state these things. The Rusnica Affirmation does not even state that it supports the Agency's motion to dismiss. Rather, the Affirmation states only that it "explains the Department's role" with respect to the Right-to-Farm Law. It does not condone the Agency's actions as either correct or authorized. See Rusnica Aff., ¶ 2. Rather, it states that the Agricultural Districts Law, in relation to the Right-to-Farm Law, "forms the cornerstones of New York's Agricultural Protection Program and implements the constitutional directive" to encourage farming. Rusnica Aff., ¶ 3. It further states that the Right-to-Farm Law "by its express terms, does not apply to state agencies such as the APA, but embodies the

Department's approach regarding *all regulations governing farm operations*." Rusnica Aff., ¶ 5 (emphasis supplied). It affirms that farm labor housing is protected as part of a farm operation and regarded as "on farm buildings," fully protected by the Right-to-Farm Law. Id. at ¶ 6. It affirms that the specific February 1, 2008 land use determination by the Commissioner in this case is "consistent with the Department's longstanding policy, that farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation and is protected by AML § 305-a." Id. at ¶ 7. Finally, it states that the Department holds firm to its policy concerning farm worker housing as expressed in its November 26, 2007 letter to the Agency. Id. at ¶ 9. (See Record Document # 10, Reply Affirmation of Paul Van Cott, dated January 29, 2008, Ex. A).

Thus, the Agency grossly mischaracterizes the Rusnica Affirmation because it has no other way to skirt around the final, the Commissioner's February 1, 2008 formal land use determination.

B. The Rusnica Affirmation Establishes That The Agency Stands Alone

The Agency is nothing more than a land use agency with the combined regional authority of the planning board and the zoning board. See Hunt Bros. v. Glennon, 81 N.Y.2d 906, 909 (1993) (regarding the Agency as the functional equivalent of a "***local*** planning board and a ***local*** zoning entity") (emphasis supplied). Although some of its Board Members, who only meet once a month like any other planning board, are designated by statute and a few are appointed by the Governor, the Agency is not a "state agency" in the ordinary sense of the term. Rather, it is nothing more than a regional land use board with a plan to implement.

The Rusnica Affirmation establishes that the Commissioner of Agriculture and Markets stands shoulder to shoulder with the Farm Bureau's amicus position as expressed in this case, i.e.,

that farm worker houses are to be treated like any other farm building as a matter of land use and planning law, real estate law, tax law, and the Right-to-Farm Law. Throughout the State of New York, no town may scrutinize farm worker housing for anything other than worker safety. The Town of Essex did that here. (See Record Doc. # 9, Affidavit of Barbara A. Lewis, sworn to January 17, 2008, Ex. B).

If anything, the Rusnica Affirmation firmly establishes that the Agency stands alone as the only land use board in the entire State of New York that asserts the right to control farm development by controlling farm worker housing. This result is not supported by a fair reading of the Act. There is no expression of legislative intent to give the Agency, as a land use agency, greater powers to discourage and control farming than that held by anybody else in New York State. Indeed, any such construction of the Act is unconstitutional.

POINT II

THE AGENCY'S RELIANCE ON JUSTICE RYAN'S AUGUST 2007 OPNION IS GROSSLY MISSPLACED

The Agency continues its incessant attempt to rely on a Decision and Order of Hon. Kevin K. Ryan, Acting Supreme Court Justice, dated August 16, 2007, which denied preliminary injunctive relief and dismissed a previous proceeding (Index No. 07-0498). The Agency clearly lacks the procedural understanding to realize that Justice Ryan's Decision did not "necessarily decide" anything. At the time of this Decision, the Agency had not even commenced its enforcement proceeding yet, which did not occur until the Agency served the Notice of Apparent Violation on September 5, 2007. See 9 NYCRR § 581-2.6 (declaring that an Agency enforcement proceeding is deemed commenced upon service of the notice of apparent violation).

The Agency mischaracterizes Justice Ryan's Decision in an effort to dissuade this Court from reaching the merits in this proceeding. At best, Justice Ryan's Decision denied preliminary

injunctive relief against the Agency's purported June 2007 cease and desist order and expressed the view that the Lewis Family Farm was not likely to succeed on the merits. (See Record Doc. # 5, Affirmation of Paul Van Cott, dated December 13, 2007, Ex. B, pp. 4-5). Then, pursuant to CPLR 7806, Justice Ryan dismissed the proceeding as premature, with leave to file a fresh Article 78 proceeding, and deferred to the Agency to see if it would commence an enforcement proceeding, at which time the matter could be heard on the merits. (Id. at 7).[1] By any reading, Justice Ryan's Decision never reached the merits.

Furthermore, this Court has already granted a preliminary injunction expressing a view that the Lewis Family Farm "has established a likelihood of success on the merits on at least some issues raised in the petition." (Justice Meyer's April 11, 2008 Decision and Order Granting a Stay, pg. 5). In doing so, this Court has already correctly brushed the Agency's collateral estoppel argument aside. Clearly, in granting the preliminary injunctive relief, the law of this case is that Justice Ryan's Decision does not have any preclusive effect.

The Agency's argument that collateral estoppel prohibits the Lewis Family Farm from attacking the Agency's jurisdiction over its farm worker housing lacks merit for three reasons. First, the Agency fails to understand that Justice Ryan's Decision was made in the context of denying preliminary injunctive relief and dismissing the action as premature. In fact, the Agency's recitation of the facts fails to mention that the Lewis Family Farm sought preliminary injunctive relief from Justice Ryan. (See Agency's June 13, 2008 Memorandum of Law, pg. 9). Thus, in applying the well-established standard for injunctive relief, Justice Ryan simply determined, based on the record then before him, that the Lewis Family Farm had not

[1] Justice Ryan stated: "The Commissioners of the APA have the authority to review this situation under Executive Law § 809. If, after receiving a determination from the Commissioners, the plaintiff is still dissatisfied, they are free to file an Article 78 proceeding at which time this Court may review the actions of the APA." (See Record Doc. # 5, Affirmation of Paul Van Cott, dated December 13, 2007, Ex. B, pg. 7).

demonstrated a likelihood of success on the merits since it appeared that the Agency had jurisdiction over the Lewis Family Farm's farm worker buildings. (See Record Doc. # 5, Ex. B to Van Cott Aff., pp. 4-5). This determination was made solely in regard to the motion for a preliminary injunction. It was not "necessarily decided" that the Agency had jurisdiction.

Second, even if Justice Ryan's determination of the Agency's jurisdiction was made outside of the context of the Lewis Family Farm's motion for a preliminary injunction, it was not "necessarily decided" or "essential" to the decision because Justice Ryan unequivocally declared that the Court lacked jurisdiction over the matter until such time that the Agency issued a final determination. Justice Ryan emphatically stated that "this situation is not ripe for judicial intervention…[and]…this matter constitutes an internal matter in which the Court will not interfere." (See Record Doc. # 5, Ex. B to Van Cott Aff., pp. 6-7). As such, collateral estoppel does not apply. See Danali Enters., Inc. v. Staub, 154 A.D.2d 864, 867 (3d Dep't 1989) (holding that a decision that an action was premature could have been made without reaching the merits, and thus, the issue was not "necessarily decided" and will not be given collateral estoppel effect).

Finally, Justice Ryan dismissed the proceeding with leave to renew pursuant to CPLR § 7806. See Longton v. Village of Corinth, 49 A.D.3d 995 (3d Dep't 2008) (holding that collateral estoppel did not apply in an Article 78 proceeding where the court did not finally resolve a matter and sent it back for an administrative hearing on a proper record). The Agency does not refute the fact that Justice Ryan dismissed with leave to renew.[2] Thus, because Judge Ryan

[2] In essence, the Agency claims that Justice Ryan ruled that the Lewis Family Farm landed on "Go Directly To Jail", when in reality, he ruled that the Lewis Family Farm landed on "Free Parking" and directed the farm to take another turn, which it has done by commencing this Article 78 proceeding. Indulging further in the metaphor, the Lewis Family Farm owns "Baltic Avenue" with three (farm worker) houses, and the Agency is desperately seeking to strip the farm of its assets. The Agency seeks to take control of every property on the board, and even the board itself. If the Agency is allowed to gain control of farm worker housing, the Agency will own the board and nobody will come to play. The Agency's efforts must fail. See Parker Brothers' *Monopoly* instructions, available at, http://www.hasbro.com/common/instruct/monins.pdf.

dismissed the claim for lack of ripeness and refused review of what was still an internal agency mater, the issue of the Agency's jurisdiction over the Lewis Family Farm's farm worker buildings was not "necessarily decided" for purposes of collateral estoppel.[3]

Accordingly, the Lewis Family Farm is not bound from challenging the Agency's jurisdiction in this Article 78 proceeding.

POINT III

THE AGENCY'S ARGUMENT FAILS TO REACH THE MERITS

The Agency has spun this case as far and wide as possible. But in the end, the Agency has chosen to ignore the simple question that this case revolves around: Does the Lewis Family Farm have the right to build farm worker housing without interference from the Agency? The answer is yes.

It is indisputable that the Agency lacks jurisdiction over "agricultural use structures" in the Park. See N.Y. Exec. Law § 805(3); Footnotes 3 and 5, *supra*; (see also Affidavit of John Privitera, sworn to January 18, 2008, ¶ 12 and Ex. G). The Act defines "***agricultural use structure***" to include "any barn, stable, shed, silo, garage, fruit and vegetable stand ***or other building or structure directly and customarily associated with agricultural use***." N.Y. Exec. Law § 802(8) (emphasis supplied). The Act defines "***structure***" to include "…buildings, sheds, ***single family dwellings***, mobile homes, signs, tanks, fences and poles and any fixtures, additions and alterations thereto." N.Y. Exec. Law § 802(62) (emphasis supplied). Therefore, it is

[3] Interestingly, the Agency seeks to rely on one part of Justice Ryan's decision, but ignore another part. Justice Ryan stated: "The plaintiff argues that the houses are agricultural use buildings, *which the APA does not dispute*." (See Record Doc. # 5, Affirmation of Paul Van Cott, dated December 13, 2007, Ex. B, pg. 5) (emphasis supplied). Thus, if collateral estoppel were to apply as the Agency would have it, then Agency is estopped from arguing that the Lewis Family Farm's farm worker houses are not "agricultural use structures." Thus, this entire proceeding is moot.

axiomatic that a "single family dwelling" that is "directly or customarily associated with agricultural use" must necessarily be an "agricultural use structure" under the Act.

The Agency's gross ineptitude to interpret its own statute must be exposed. (See Lewis Family Farm's Memorandum of Law in Support, dated June 3, 2008, pp. 12-17). After extensive motion practice and arguments at the administrative level, before this Court, and before the Appellate Divison, the Agency still has not presented a single argument that supports the Determination's interpretation of the definition of "agricultural use structure", nor has it rebutted the plethora of evidence that supports the fact that farm worker housing is "directly and customarily associated with agricultural use." In fact, the Agency has not even attempted to salvage—much less discuss—the Determination's inept interpretation of the term "agricultural use structure."

Further, the Agency claims that "at no time has [it] sought to regulate Lewis [Family] Farm's agricultural use structures or its farming operations." (Agency's Memorandum of Law, dated June 13, 2008, pg. 41). This fabrication must not influence the Court.[4] The Agency has sought to regulate the Lewis Family Farm from the beginning of this matter. (See Record Doc. # 9, Affidavit of Barbara A. Lewis, sworn to January 17, 2008, ¶ 22; Record Doc. # 5, Affirmation of Paul Van Cott, dated December 13, 2007, Ex. A [Ex. A to Reynolds Aff.]). Moreover, if the Agency has jurisdiction over farm worker housing, it can deny it to a farmer and thus control farm growth, contrary to the Constitutional mandate to encourage farm development.

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[4] The Agency also misstates the procedural history of this matter. Contrary to the Agency's contentions otherwise, the Lewis Family Farm commenced its initial declaratory judgment action on June 26, 2008, not "on or about June 28, 2008". (See Agency's Memorandum of Law, dated June 13, 2008, pg. 8). The Lewis Family Farm commenced that action before the Agency served its purported cease and desist order. (See Lewis Aff., ¶¶ 27-28) (Record Doc. # 9).

Here, the Agency admits that farm worker housing is invisible to the Park Land Use Plan, because it is never a "principal building". (See Agency's Memorandum of Law, dated June 13, 2008, pg. 40).[5] Thus, the Agency demands jurisdiction over admittedly immaterial development.

Ironically, the Agency simply cannot see the forest for the trees. Its incessant resolve to have its proverbial hand in everything that happens in the Adirondack Park has finally backfired. The Agency now sits before this Court and must explain why it has grossly distorted its own statute and refuses to obey the New York State Constitution in an effort to regulate the Lewis Family Farm, in particular, and farming as a whole. It cannot do so.

Accordingly, this Court must find that the Lewis Family Farm's farm worker buildings are exempt "agricultural use structures" under the Act, and annul the Agency's *ultra vires* Determination in this Article 78 proceeding.

POINT IV

THE AGENCY FAILS TO EXPLAIN WHY IT DENIED DUE PROCESS TO THE LEWIS FAMILY FARM

The Notice of Apparent Violation, which was issued by the Agency on September 7, 2007, specifically states as follows: "If there are facts in dispute, a hearing will be held to develop the record for consideration by the Enforcement Committee." (Notice of Apparent Violation, Record Doc. # 3, pg. 1).

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[5] The Agency continues to stand the Act on its head in an effort to reach the farm buildings at issue in this case, rather than reading the Act consistent with the Constitutional mandate, and that of Section 305 of the Right to Farm Law, to construe the Agency's regulations in a manner that is favorable to farmers. Indeed, the Agency goes so far as to say that Executive Law Section 802(50)(g) "provides that single family dwellings used for farm worker housing are separate structures for jurisdictional purposes." (See Agency's Memorandum of Law dated June 13, 2008, p. 40). This is not what the cited provision says. Indeed, it is quite the opposite. Section 802(50)(g) states that an entire farm, including all of its barns, silos, the farmer's house, sheds, stands and as many farm worker houses as the farmer needs are still all counted as only one principal building. Thus, the full development of a farm to its fullest economic potential with farm worker housing has no impact upon the density of the Park. Therefore, farm worker housing is beyond the Agency's jurisdiction because, fundamentally, farm growth is immaterial according to Section 802(50)(g), and thus, beyond the Agency's mission.

The record is replete with disputed facts, although these issues do not have to be reached if the Court finds the Lewis farm worker housing exempt structures. (See e.g., Lewis Family Farm's Memorandum of Law in Support, dated June 3, 2008, pp. 38-39). However, the Agency refused to hold the requisite hearing. Thus, the Agency violated the Lewis Family Farm's right to due process.

POINT V

THE AGENCY MISUNDERSTANDS THE STANDARD OF REVIEW

Only the twelfth cause of action in the Lewis Family Farm's Amended Petition alleges that some facts contained in the Agency's Determination are not supported by substantial evidence. See Amended Petition, ¶¶ 90-92. The substantial evidence issue, although minor, was preserved by the Lewis Family Farm in this proceeding. It does not have to be reached if the Court finds for the Lewis Family Farm on the statutory causes of action in the Petition, i.e., causes of action five through ten. See Amended Petition, ¶¶ 76-87; see also CPLR § 7804(g).

The Lewis Family Farm has clearly maintained that the Agency's Determination was *ultra vires* and beyond the Agency's jurisdiction, see CPLR § 7803(2), and was also affected by an "error of law", see CPLR § 7803(3). See POINTS I and II to Lewis Family Farm's June 3, 2008 Memorandum of Law.

The Agency attempts to contort the standard applicable to the Lewis Family Farm's twelfth cause of action and claim that the Lewis Family Farm seeks that standard of review for this entire proceeding. The Agency's argument is nonsense.

The Agency clearly does not understand the questions being raised in this Article 78 proceeding. See POINT IV to Agency's Memorandum of Law, dated June 13, 2008.

POINT VI

THE AGENCY'S DUPLICATIVE ENFORCEMENT ACTION MUST BE DISMISSED IN ITS ENTIRETY

The Agency declined the Lewis Family Farm's invitation to respond collectively to the Petition and the motion to dismiss the duplicative enforcement action. As such, the Agency submitted its Memorandum of Law in Opposition to the Lewis Family Farm's motion to dismiss on June 10, 2008. In its memorandum of law in opposition to the motion to dismiss, the Agency fails to articulate any reason why its duplicative enforcement action is warranted.

The duplicative enforcement action, which was commenced mere weeks after the Determination was rendered, contains causes of action that are identical to those set forth in the Agency's Notice of Apparent Violation dated September 7, 2007. Compare Amended Compl., ¶¶ 49-56 with Record Doc. # 3, Notice of Apparent Violation, ¶¶ 33-40. The Agency did not simply commence a simple enforcement action with a single cause of action seeking to enforce the Determination. Rather, it chose to commence an action and allege causes of action that the Agency had already alleged at the administrative level. As such, the Agency's duplicative enforcement action, to the extent that it alleges previously alleged cause of action, is barred.[6] See Ryan v. New York Tele. Co., 62 N.Y.2d 494, 499 (1984) (holding that "the doctrines of *res judicata* and collateral estoppel are applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies").

Additionally, the Agency has failed to articulate any legitimate reason why Salim "Sandy" B. Lewis and Barbara A. Lewis should be held individually liable in this action. A

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[6] It appears that the Agency believes that its action is, in fact, a simple enforcement action, seeking to enforce the Determination. See Agency's Memorandum of Law in Opposition, dated June 10, 2008, pp. 3, 5. However, the Agency fails to understand that it has alleged causes of action that were previously alleged by the Agency at the administrative level. Thus, by re-alleging these causes of action, the Agency's enforcement action is duplicative and barred. If the purpose of the collateral action is to enforce the Determination, it is premature and precipitous, since the Determination is now under Court review.

court will only disregard the corporate form and "pierce the corporate veil" in order to prevent fraud or achieve equity. Matter of Morris v. New York State Dept. of Taxation & Fin., 82 N.Y.2d 135, 140 (1993). The Agency has not cited any law or alleged any facts that would warrant imposing individual liability on the Lewises.

The Agency improperly relies on New York v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985), for the proposition that a corporate officer who participates in a wrong may be held individually liable without piercing the corporate veil. (See Agency's Memorandum of Law in Opposition, pg. 6). The Agency is wrong. In this federal case, the Second Circuit held that a corporate officer was personally liable for the State's environmental clean-up costs under CERCLA, 42 U.S.C. § 9607, and under state law because it was clear that the defendant corporation that the shareholder/officer formed would not pay for its liability. See New York v. Shore Realty Corp., 759 F.2d 1032 (2d Cir. 1985). That is not the case here. The Agency has not alleged—nor can it allege—that the Lewis Family Farm cannot or will not pay the $50,000 fine should the Agency's action succeed.

The Agency has twisted facts in order to attempt to justify its attempt to hold Salim "Sandy" B. Lewis and Barbara A. Lewis personally liable in this action. The Agency states that "they submitted an application for a permit" and that "Barbara and Salim Lewis acted not only individually as applicants for a permit, but as officers of Lewis Family Farms (sic), Inc." (See Agency's Memorandum of Law in Opposition, pg. 8). The only permit application filed with the Agency was that completed by Barbara A. Lewis on behalf of the Lewis Family Farm. See Record Doc. # 5, Van Cott Aff., Ex. A [Ex. A. to Quinn Aff.]). Thus, "they" never submitted anything to the Agency in their individual capacities.

The Agency has no legitimate reason for seeking enforcement against Salim B. "Sandy" Lewis or Barbara A. Lewis, and allowing the Agency's claims against them to remain would invariably expose corporate officers to personal liability for any corporate obligation. This unjustness must not be permitted.

CONCLUSION

Based on the foregoing, the Lewis Family Farm respectfully seeks judgment on its Petition vacating and annulling the Agency's Determination, dismissing the Agency's duplicative enforcement action, denying the Agency's motion to dismiss the Petition, and granting such other and further relief the Court deems just and proper.

Dated: June 18, 2008
Albany, New York

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/s/ John J. Privitera

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