



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

December 2, 2008

BY FACSIMILE AND MAIL

John J. Privitera, Esq.
McNamee, Lochner, Titus
and Williams, P.C.
677 Broadway
Albany, New York 12207-2503

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency
Sup. Ct, Essex Co. No. 315-08; App.Div. No. 505179
Adirondack Park Agency v. Lewis Family Farm, Inc.
Index No. 332-08

Dear Mr. Privitera:

In a letter dated November 20, 2008, to Essex County attorney Daniel T. Manning you demanded release of \$50,000 held in escrow by the Essex County Treasurer. Your November 20, 2008 demand letter referenced the Supreme Court's November 19, 2008 Decision and Order in the above-captioned consolidated matters, notwithstanding the fact that the Order was silent on release of the funds. You also reference an April 11, 2008 Supreme Court order which did not require escrow of the funds and indicate it "had been slightly modified by the Appellate Division." Your demand letter did not disclose that, in fact, the funds were placed in escrow by the Appellate Division, Third Department, by Order dated April 28, 2008, pursuant to CPLR § 5519. Moreover, your November 20 letter indicates that it was a follow-up to an earlier letter you sent to Mr. Manning that same morning. I was not copied on any of your correspondence to Mr. Manning.

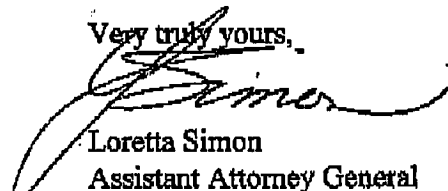
I became aware of one of your November 20, 2008 letters on November 21, 2008, when your associate Jacob Lamme sent me an email requesting that I provide a copy of any correspondence sent by this office to Mr. Manning. Apparently, Mr. Lamme assumed I had sent a letter to Mr. Manning, and attached a copy of what I believe to be the second of your two letters to Mr. Manning. I did not send a letter to Mr. Manning. Rather, I sent Mr. Manning a copy of the November 20, 2008 letter I sent to Acting Supreme Court Justice Hon. Richard Meyer pointing out that the escrow funds were the subject of an Appellate Division order. As

appropriate and courteous practice requires, and as is routine in this office, Mr. Lamme was copied on my letter to Justice Meyer and it was faxed to Mr. Lamme on November 20, the date it was issued. I note that I have still not received a copy of your first November 20, 2008 letter to Mr. Manning demanding release of the escrow funds.

The one letter to Mr. Manning dated November 20, 2008 I received, provided as an attachment to Mr. Lamme's November 21, 2008 email, both contains inflammatory language and misrepresents facts and the law. You accuse me, without any basis, of acting improperly and imply that I engaged in "bullying tactics or improper influences" in my conversation with Mr. Manning. Your allegations are completely false. I did inform Mr. Manning of the Appellate Division Order requiring the escrow fund, of which he did not have a copy. During our conversation, Mr. Manning indicated that he was under pressure from you and your client to release the escrow funds. In fact, your letter advises Mr. Manning – incorrectly – that "[t]here is no basis in law for holding the funds." Accordingly, I faxed a copy of the Appellate Division Order to Mr. Manning. Furthermore, your letter offered Mr. Manning your legal opinion – again, an incorrect representation of the law – that the State has no right to appeal the November 19, 2008 Decision and Order. As you know, the Agency has an appeal as of right pursuant to CPLR § 5513. Finally, on the same day you wrote two letters to the county attorney claiming he had no basis in law to continue to hold the funds, you were seeking a signed judgment from Justice Meyer authorizing a release of the funds. Justice Meyer did not sign your proposed judgment until the next day, November 21, 2008.

I must insist that I am copied on any and all matters related to this litigation. Your demands to the county attorney insisting upon release of the \$50,000 escrow account without a directive from any court to do so, and your misrepresentations to the county attorney regarding the case and the applicable law, were made in letters that were not copied to me as counsel of record and had the potential to prejudice the rights of the Adirondack Park Agency.

Very truly yours,



Loretta Simon
Assistant Attorney General
(518) 402-2724

cc Daniel T. Manning III, Esq.
Paul Van Cott, Esq.