

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

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LEWIS FAMILY FARM, INC.,

Petitioner,

-against-

ADIRONDACK PARK AGENCY,

Respondent.

**MEMORANDUM OF LAW**

Index No. 315-08

Hon. Richard B. Meyer

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**PRELIMINARY STATEMENT**

Petitioner Lewis Family Farm, Inc. submits this memorandum of law in support of its motion pursuant to CPLR 2221 for leave to reargue and renew its motion for a stay of its obligation to comply with Respondent Adirondack Park Agency's Enforcement Committee Determination dated March 25, 2008 (hereafter "Determination"), pending review of said determination in this Article 78 proceeding.

**STATEMENT OF FACTS**

The relevant facts to this motion are set forth in the Amended Verified Petition, Affirmation of John J. Privitera, dated April 14, 2008, as well as in the Affidavit of Barbara A. Lewis, sworn to April 7, 2008 and Affidavit of John J. Privitera, sworn to April 7, 2008, which were before the Court on the previous motion for a stay.

**ARGUMENT**

**THIS COURT SHOULD GRANT LEAVE TO REARGUE  
AND RENEW PETITIONER'S MOTION FOR A STAY**

Courts have broad discretion to stay the enforcement of a determination under review in an Article 78 proceeding. CPLR 7805. Pursuant to CPLR 2221, courts also have broad discretion to grant leave to reargue a motion based on matters of fact or law that were overlooked

or misapprehended by the court on the prior motion (see CPLR 2221(d)), or grant leave to renew a motion based on new facts not offered on the prior motion that would change the prior determination (see CPLR 2221(e)). Moreover, a combined motion for leave to reargue and renew is proper under CPLR 2221(f).

A motion for reargument is addressed to sound discretion of court that decided the prior motion and may be granted on showing that the court overlooked or misapprehended facts or law in making its prior determination. Long v. Long, 251 A.D.2d 631 (2d Dep't 1998); Dixon v. New York Cent. Mut. Fire Ins. Co., 265 A.D.2d 914 (4th Dep't 1999).

A motion for renewal should be accompanied by a justifiable excuse as to why the newly presented facts were not presented on the earlier motion. See CPLR 2221(e)(3). Nevertheless, a court has wide, flexible discretion to grant renewal even on facts known to movant at time of original motion. Cronwall Equities v. Int'l Links Dev. Corp., 255 A.D.2d 354 (2d Dep't 1998); Friedman v. U-Haul Truck Rental, 216 A.D.2d 266 (2d Dep't 1995); Weisser v. Park Lane Foods, 202 A.D.2d 496 (2d Dep't 1994).

Here, the Agency acknowledges that it completed service of its March 25, 2008 Determination on Friday, April 4, 2008. (See Verified Complaint, *Adirondack Park Agency v. Lewis Family Farm, Inc., et al.*, Essex County Index No. 332-08, ¶ 47). Thus, by attempting to force compliance with the March 25, 2008 Determination by April 14, 2008, the Agency effectively slashed Petitioner's time in which to challenge the Determination from sixty (60) days to twenty (20) days. See N.Y. Executive Law § 818. As a result, Petitioner was forced to hastily draft its Verified Petition, Order to Show Cause, Affidavits, and Memorandum of Law in Support in order to obtain a stay without being in violation of the March 25, 2008 Determination. Petitioner accomplished this task on Monday, April 7, 2008 – the very next business day after

service was complete. Thus, by reason of the extremely short turnaround, Petitioner mistakenly did not emphasize several key facts that prove that it will suffer irreparable harm if the entire March 25, 2008 Determination is not stayed.

Petitioner moved by Order to Show Cause for an order pursuant to CPLR 7805 to stay its obligation to comply with the March 25, 2008 Determination pending the outcome of the instant Article 78 proceeding. This Court granted a stay as to Paragraphs (1) through (4), and (7) of the March 25 Determination, but denied a stay as to Paragraphs (5) and (6) of the March 25 Determination, which prohibit Petitioner from occupying the three farm worker dwellings until an Agency permit is issued and require Petitioner to pay a civil penalty of \$50,000 to the Agency by April 28, 2008.

This Court denied a full stay because it found that Petitioner made an insufficient showing of irreparable harm as to Paragraphs (5) and (6) of the March 25 Determination. This motion to reargue and renew the motion for a stay will clarify the facts and law before the Court and provide it with new facts that were previously before the Agency when it made the March 25, 2008 Determination. (See Affirmation of John J. Privitera, dated April 14, 2008).

Specifically, as set forth more fully in the accompanying affirmation, Petitioner needs the Dormitory house, which the Respondent never maintained was illegal until the March 25 Determination, to house four visiting Nepalese farmers who will arrive in a few weeks. The other houses are necessary elements of two farm jobs that cannot even be offered unless the houses can be used. The facts regarding the Nepalese farm workers are not new to the overall proceeding, since they were summarized in the Memorandum dated January 22, 2008, which was attached to the Affidavit of John J. Privitera, sworn to April 7, 2008, which was before the Court on this motion. We respectfully refer the Court to the January 2008 Affidavit of Barbara Lewis,

as summarized and attached to the accompanying Affirmation of John Privitera, dated April 14, 2008.

**CONCLUSION**

Based on the foregoing, Petitioner prays that this Court exercise its discretion to grant leave to reargue and renew the motion for a stay pursuant to CPLR 2221, and this Court should enter an order staying the entire enforcement of the Agency's Determination pending the outcome of this Article 78 proceeding.

Dated: April 14, 2008  
Albany, New York

McNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

*/s/ John J. Privitera*

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