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ATTORNEYS AT LAW

November 20, 2008

***VIA TELEFAX: (518) 873-3894, E-mail
and First Class Mail***

Daniel T. Manning III, Esq.
Essex County Attorney
7551 Court Street
P.O. Box 217
Elizabethtown, New York 12932

Re: Lewis Family Farm, Inc. v. Adirondack Park Agency, No. 315-08; 332-08
(Essex County, November 19, 2008)
Lewis Family Farm, Inc.'s \$50,000 Escrow Check

Dear Mr. Manning:

This letter serves as a follow up to our telefaxed letter of this morning. On behalf of the Lewis Family Farm, I am now compelled to demand release of the referenced escrowed funds.

Judge Meyer's referenced Decision and Order:

(a) annulled the March 25, 2008 Administrative Determination which had directed the payment of a \$50,000 fine. As you know, an annulment renders the matter null and void and therefore, there is no directive upon which to require or hold the penalty; and

(b) vacated his April 11, 2008 stay, which had been slightly modified by the Appellate Division, as moot. Thus, His Honor found that since the underlying Administrative Determination no longer existed, the stay Order, which included the escrow arrangement, was rendered moot because there is nothing to stay.

For these reasons, there is no legal basis whatsoever upon which to continue to hold the trust funds in escrow and they should be released immediately.

If we are compelled to pursue release of the funds, our first order of business will have to be a request to Judge Meyer that he issue an order directing the County to Show Cause why the funds are being withheld.

You indicated during our telephone conversation a few moments ago that the Attorney General's Office contacted you in an effort to persuade you to hold the funds. This is clearly

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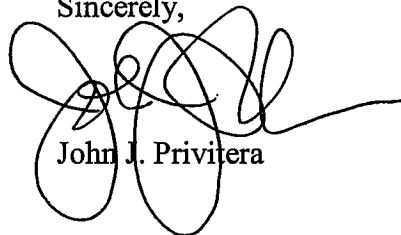
improper for all of the reasons I have already stated. Decisions are to be made based on the law, not bullying tactics or improper influences. To be sure, New York State may sometimes gain an automatic stay from enforcement of an Order or Judgment upon the filing of a proper Notice of Appeal. First, since there is no Notice of Appeal on file in this case, CPLR § 5519 does not come into play. If and when the Attorney General seeks to argue that it has gained some procedural advantage by virtue of the filing of a Notice of Appeal, none can be gained in this case because there is no element of Judge Meyer's Order to be enforced. See Matter of Pickerell v. Town of Huntington, 219 A.D.2d 24 (2d Dep't 1996) (holding that self-executing provisions of an order are not subject to the automatic stay provisions of CPLR § 5519(a)(1)); Crane v. New York Council 66, 102 A.D.2d 682 (3d Dep't 1984) (recognizing "the well-recognized principal that a stay may only be used as a shield, not a sword").

The State needs no shield here because the Order is self-executing and no party has been ordered to take any act henceforth. If, for example, the Lewis Family Farm's Article 78 Petition had sought an order directing the Adirondack Park Agency to process a permit application, and Judge Meyer ordered such to be done, a proper and timely Notice of Appeal, if filed, would protect the Adirondack Park Agency from any effort to enforce the order by operation of § 5519. This is how the statute works and it would be an effective shield in this instance. Here, however, there is no directive in the Court's Order that either needs a shield or can gain one.

Surely, the Adirondack Park Agency cannot gain so formidable a sword by the filing of a proper Notice of Appeal that they effectively revive the annulled Administrative Order such that it can be affirmatively enforced by retention of the fine. Indeed, Judge Meyer's referenced Order is not even appealable as a right by New York State. See CPLR § 5701(c). The Agency has to gain permission to appeal this Article 78 Order from the Appellate Division as a condition precedent to the filing of a Notice of Appeal. In order to gain a stay of Judge's Meyer's Order that maintains the status quo, the State must affirmatively meet the test for a stay pending appeal, including a clear showing of likelihood of success on the merits.

There is no basis in law for holding the funds nor any order that allows you to do so. Please contact me immediately and tell me when and where we may pick up the check.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Privitera", with a long horizontal flourish extending to the right.

John J. Privitera

JJP/klh