

McNamee, Lochner, Titus & Williams, P.C.

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December 4, 2008

Loretta Simon, Esq.
Assistant Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, New York 12224

**RE: Lewis Family Farm, Inc. v. Adirondack Park Agency
Essex County Index No. 498-07 (Appellate Division Case # 504696)**

Dear Ms. Simon:

Thank you for your letter of December 2, 2008, to which I now respond. As you know, your letter is publicly available under the Freedom of Information Law ("FOIL"), particularly since you copied County Attorney Daniel Manning and Paul Van Cott of the Adirondack Park Agency. I do not understand the purpose of the letter because it is legally insignificant. However, to the extent that you seek to relay a narrative to the public, the complete sequence of events must be told.

On November 19, 2008, Essex County Treasurer Michael Diskin assured Mr. Sandy Lewis and counsel for Lewis Family Farm, Inc. that the \$50,000.00 being held in escrow would be immediately released to Mr. Lewis in accordance with Judge Meyer's Decision and Order of that same day. However, Mr. Diskin believed that the County may be entitled to a "poundage" fee, so he sought counsel from County Attorney Daniel Manning.

On November 20, 2008, we sent Mr. Manning a letter (a copy of which is enclosed) explaining that Judge Meyer's Decision and Order granted complete relief to Lewis Family Farm, Inc., thus liberating the escrowed funds. We asked that the discretionary poundage be waived. Later, we were informed that the County Treasurer would not release the funds until Mr. Manning allowed it. I called Mr. Manning to explain the law, and learned that the Attorney General's office had already contacted him and inappropriately asked him to hold the funds. As I explained the law, Mr. Manning asked me to put it in writing, which I did. You have this letter.

We also learned that you had copied Mr. Manning on your November 20, 2008 letter to Judge Meyer, although the letter fails to indicate that he was being copied. Moreover, pursuant to a FOIL request, we obtained Mr. Manning's notes of the ex-parte telephone conference with

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Loretta Simon, Esq.
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your office. We also received a letter from Mr. Manning accepting your views and telling us to seek a Court Order. We provided this letter to the Court, and Judge Meyer agreed with the Lewis Family Farm in the executed final judgment on November 21, 2008.

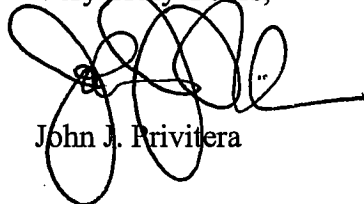
Needless to say, based on Mr. Manning's notes and my conversations with him, Mr. Manning certainly felt obliged to defer to the incorrect view of the law conveyed by your office, as he later wrote. We remain concerned that any contact with Mr. Manning by the State was inappropriate as it sought to gain a procedural advantage to which the State was not entitled as found by Judge Meyer.

Throughout this litigation, we have disagreed on the law at almost every turn. Once again, we disagree with your conclusion that the Agency can appeal the November 19, 2008 Decision and Order as of right. While the Agency certainly can appeal the portion of that order pertaining to the dismissal of its duplicative civil action, it cannot appeal the Article 78 portion that annulled the Agency's March 25, 2008 Determination without permission from the Appellate Division. Thus, our representation to Mr. Manning was correct. Of course, the Agency is free to file an appeal as of right to the final judgment, notice of entry of which was served on November 26, 2008. Even if the Agency decides to appeal, the automatic stay of CPLR 5519 could not have been used as a sword to keep the funds in escrow pending any appeal. Thus, the funds were properly released to Lewis Family Farm, Inc.

The Lewis Family Farm has been correct on the law as to virtually each and every issue the Agency has raised, as Judge Meyer found in entering the final judgment. We remain confident in our position on this issue as well.

If you or anyone in the Attorney General's office would like to discuss this further, please feel free to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "John J. Privitera". The signature is highly stylized and cursive, with a long horizontal line extending to the right.

John J. Privitera

JJP/klh

Enclosures

cc: Sandy and Barbara Lewis
Jacob F. Lamme, Esq.
Cynthia Feathers, Esq.
Daniel T. Manning, Esq.

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November 20, 2008

VIA TELEFAX: (518) 873-3894

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

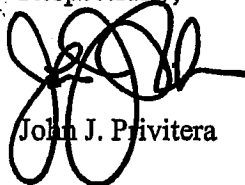
Dear Mr. Manning:

Please accept the gratitude of the Lewis Family Farm, Inc. ("Farm") and its principals, Barbara Lewis and Sandy Lewis, for the County Treasury's acceptance of the fiduciary responsibility of caring for the Farm's \$50,000 escrow check.

As you understand, the Honorable Richard Meyer filed a Decision and Order yesterday, granting complete relief to the Farm and dismissing the enforcement case in its entirety, thus liberating the escrow check. We know that the County may be entitled to an escrow fee under some circumstances based on our research over the past 24 hours, but the County has no obligation to charge a fee and the farm remains concerned that no escrow fee was disclosed at the time the check was placed with the treasury. Therefore, we respectfully request that the County Treasurer draw a check in the entire amount of the escrowed funds with whatever fair interest may seem appropriate.

Thank you once again for your assistance in this matter.

Respectfully,



John J. Privitera

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