

STATE OF NEW YORK SUPREME COURT  
ESSEX COUNTY

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LEWIS FAMILY FARM, INC.,

Petitioner,

v.

NEW YORK STATE ADIRONDACK  
PARK AGENCY,

Respondent.

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AFFIRMATION OF  
LORETTA SIMON

INDEX No. 315-08  
Hon. Richard B. Meyer

ADIRONDACK PARK AGENCY,

Plaintiff,

v.

INDEX No. 332-08

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

Defendants.

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Loretta Simon, an attorney duly admitted to practice in the courts of the State of New York, hereby affirms under penalty of perjury pursuant to CPLR § 2106:

1. I serve as an Assistant Attorney General in the Environmental Protection Bureau of the Office of the New York State Attorney General and am counsel to the Adirondack Park Agency ("the APA" or "the Agency") in the above-captioned matters (article 78 proceeding Lewis Family Farm, Inc. v. New York State Adirondack Park Agency, Index No. 315-08 [hereafter "Lewis Farm 2"] and the state civil enforcement action APA v. Lewis Family

Affirmation of Loretta Simon  
dated August 28, 2009

Farm, Inc., Salim B. Lewis and Barbara Lewis, Index No. 332-08, [hereafter "Lewis Farm 3"])). I am familiar with the facts of these cases and also represented the APA in the declaratory judgment action brought by Lewis Family Farm Inc., ("Lewis Farm") against the APA in 2007 (Lewis Family Farm, Inc., v. APA, Essex Co. Sup. Ct., Index No. 498-07, RJI No. 15-1-2007-0153, Hon. Kevin K. Ryan [hereafter "Lewis Farm 1"])).

2. I submit this affirmation in opposition to Lewis Farm's application for attorneys fees. Petitioner seeks attorneys fees and expenses under the New York State Equal Access to Justice Act ("EAJA") codified as CPLR article 86, based upon this Court's decision and order dated November 19, 2008, as affirmed by the Appellate Division, Third Department on July 16, 2009.<sup>1</sup>

**I. Petitioner is Not Entitled to Attorneys Fees Under Article 86**

3. EAJA provides for attorneys fees to be awarded to a prevailing party in a civil action "*against the state*", unless the Court finds that the government was substantially justified

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<sup>1</sup> This Court issued a letter decision on April 25, 2008, determining several motions in cases 1 and 2, including a motion to consolidate. The order consolidating cases 2 and 3 was signed June 10, 2008 and entered in the Essex County Clerk's office on June 12, 2008. See Exhibit A, Order Consolidating Actions, dated June 10, 2008, Meyer, Acting J.S.C. In a Decision and Order on Motion dated January 15, 2009, the Appellate Division designated the APA as appellant and consolidated Lewis Farm cases 1,2 and 3 "to the extent that the appeals shall be heard together." See Exhibit B, Decision and Order on Motion, dated January 15, 2009.

in its position (emphasis added), or that special circumstances make an award unjust. See CPLR § 8601 (a).

4. The APA submits that its position - namely its March 25, 2008 determination - was substantially justified, and that the Agency had a reasonable basis in law and fact to conclude it had jurisdiction over the single family dwellings in dispute. Accordingly, the APA opposes any award. See generally Affidavit of Cecil Wray, dated August 24, 2009 ("Wray Aff.").

5. In deliberating and issuing its March 25, 2008 Determination finding that the three single-family dwellings on the Lewis Farm were subject to APA permitting requirements under both the APA and Rivers Act<sup>2</sup>, the APA was substantially justified in relying on long-standing application of its statutes and the August 16, 2007 decision of Justice Kevin Ryan confirming the Agency's scope of regulatory jurisdiction. See Wray Aff., Exhibit A (3/25/08 Determination); Exhibit B (8/16/07 Decision of Hon. Ryan).

6. Petitioner claims in its fee application, as it must, that the Agency was not "substantially justified" in its determination. Among other things, petitioner asserts that the Agency ignored a letter from a sister state agency, the

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<sup>2</sup> The Adirondack Park Agency Act ("APA Act"), Executive Law § 801 et seq. and the Wild, Scenic and Recreational Rivers Act ("Rivers Act"); ECL § 15-2701, et seq.

Department of Agriculture and Markets, and that a determination of Agriculture and Markets dated February 1, 2008, pursuant to Agriculture and Markets Law § 308(a), was binding on the APA. Petitioner ignores this Court's dismissal of its fourth cause of action relating to Agriculture and Markets Law, finding "there is no legal requirement for the Agency to defer to an opinion of the Commissioner of Agriculture and Markets when interpreting the Agency's own statutory scheme." See Decision and Order, Supreme Court Essex County, dated July 2, 2008, p. 10. Petitioner's assertions are further belied by the underlying record. See Exhibit C, Letters of correspondence from the record between APA and the Department of Agriculture and Markets dated 12/4/07, 12/3/07, 11/26/07, 8/7/07 and 6/29/07; see also Exhibit D, June 13, 2008 Affirmation of John F. Rusnica, Department of Agriculture and Markets ¶ 7 [stating February 1, 2008 opinion "was advisory" not binding], with attached opinion.

7. Further, special circumstances make an article 86 award here unjust. See CPLR 8601(a). The Agency made a reasonable determination of jurisdiction in a case of first impression, based on its reading of the applicable statutes, its application of undisputed facts, and relying on the decision and order in Lewis Farm 1. See Wray Aff', ¶¶ 4-8. Given these special circumstances, an award would be unjust.

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**II. To The Extent the Court Determines an Award is Warranted, Petitioners Fee Application Must be Substantially Reduced**

8. In the event that the Court determines that the APA was not substantially justified in its determination, despite the record demonstrating otherwise, or if the Court rejects the APA's assertion that special circumstances make an award unjust, the petitioner's fee application must be substantially reduced.

9. Petitioner's \$208,770.06 Article 86 fee request should be denied for all items relating to: 1) the APA's enforcement action (Index No. 332-08); 2) the illegal ex-parte TRO application brought by petitioner in its article 78 proceeding; 3) fees relating to four motions to the Appellate Division in Lewis Farm 1 (Index No. 498-07), for extensions of time to perfect the appeal; and 4) fees for time spent on generating publicity and other non-legal expenses, such as work on internet websites. Petitioner's fees should be further reduced by denying compensation at the attorney rate for work which did not require an attorney's skills. Furthermore, of the sixteen claims asserted in the petition, petitioner did not succeed on seven claims and should therefore not be reimbursed for those costs.<sup>3</sup>

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<sup>3</sup> The petition asserted sixteen (16) claims in its amended petition, the court did not address five (three due process claims, one claim involving the Local Government Review Board, and one claim relating to substantial evidence) and the Court granted dismissal on two (res judicata barred Lewis Farm from asserting a violation of §305-a of Agriculture and Markets

Finally, any remaining hours should be calculated at the reasonable prevailing rate for Essex County, not at the \$300 per hour rate requested in the application.

A. Petitioner is not Entitled to Fees Related to the APA's Enforcement Action

10. Because EAJA applies only where the state is the defendant, petitioner's application should be reduced by eliminating all fees charged for the APA's enforcement action against petitioner in Lewis Farm 3 (Index No. 332-08). CPLR § 8601 (a) allows fees "in any civil action brought against the state." (emphasis added). Thus, petitioner may seek reimbursement for its CPLR article 78 proceeding (Index No. 315-08, Lewis Farm 2); it may not obtain article 86 fees for any reply papers, motions, including Lewis Farm's motion to dismiss the APA's enforcement action, its motion for summary judgment in the APA action and other expenses relating to the APA's action. Attached herein as Exhibit E, Fees Ineligible for Reimbursement Pursuant to CPLR §8601(a), is a break-out of fees relating to the APA's enforcement action totaling in excess of \$22,000.00.<sup>4</sup>

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Law (claim 3) and the claim relating to Agriculture and Markets Law § 308 (claim four). See Decision and Order, dated July 2, 2008.

<sup>4</sup> We note that while EAJA bars an award in the APA enforcement case, the costs assessed by this Court in its July 2, 2008, Decision and Order, dismissing the State's individual claims against Barbara and Salim Lewis [\$100 each] are currently

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Accordingly, petitioner can only collect fees in Lewis Farm 2 (Index No. 315-08), not for the State's enforcement action (Index No. 332-08).

**B. Petitioner should not be Awarded Expenses  
For its Illegal Ex-Parte Stay**

11. Petitioner should not be compensated for expenses relating to the April 8, 2008 illegal ex-parte stay it obtained against the APA at the commencement of the underlying article 78 proceeding. See Exhibit F, April 8, 2008 ex-parte stay; April 8, 2008 letter of objection from the Office of the Attorney General; April 9, 2008 Amended Order to Show Cause. CPLR § 6313 (a) plainly prohibits ex parte restraining orders against the State and other government entities. "No temporary restraining order may be granted ... against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties." See McArdle v. Comm. of Investigation, 41 A.D.2d 401 (3d Dep't 1973) ("As we have held several times, stays which restrain State officials from the performance of their official duties may not be granted ex parte"). The Uniform Rules § 202.7(f), also require notification of the time, date and place, to the party against whom the temporary restraining order is sought. Counsel failed to notify the Attorney General's office

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being processed for payment.

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when he knew or should have known, as an experienced attorney and former Assistant Attorney General, that ex-parte stays are prohibited against a State agency. Accordingly, counsel's fee request in excess of \$9,000, for research, preparation and presentation of the ex-parte stay to Supreme Court, in derogation of CPLR § 6313[a], should be excluded. See Exhibit G, Disputed Fees and Expenses (ex parte stay fees highlighted in blue).

**C. Fees for Appeal of Lewis Farm 1 Not Appropriate**

12. Petitioner should be denied fees relating to four motions to the Appellate Division, Third Department, seeking extensions of time to perfect the appeal in Lewis Farm 1 (Index No. 498-07)<sup>5</sup>. Counsel should not be reimbursed for its excessive delay in perfecting that appeal, thereby protracting the litigation well beyond the nine month deadline for abandonment. See New York Rules of Practice § 800.12. Article 86 prohibits collection of such fees: "fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings." See CPLR § 8601 (a).

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<sup>5</sup> The Lewis Farm 1 declaratory judgment action was brought in 2007, prior to the March 25, 2008 administrative determination herein, was litigated at the Supreme Court level by two other law firms, decided by another Judge, and dismissed on the APA's motion. In addition to denial of the fees for petitioner's excessive delay, it is not clear that that portion of the fee request relating to Lewis Farm 1 is properly before this Court, as fee applications are to be heard by the lower court that heard the action. CPLR § 8601(b).



See Exhibit G, Disputed Fees and Expenses (Lewis Farm 1 fees highlighted in green).

D. Fees for Publicity, Website Work and Other Nonlegal Expenses Should be Denied

13. Article 86 defines "Fees and Other Expenses"" as "reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorneys fees, including fees for work performed by law students or paralegals under the supervision of an attorney . . . ." CPLR § 8602 (b). Hours spent communicating with the press, drafting letters and meeting with potential litigation allies, and similar non-legal activities are not legal services that the State of New York should fund through article 86. Petitioner should not be compensated for expenses relating to publicity: "discuss issues with journalists" (4/15/08 entry); "Series of conferences regarding press inquiries" (4/17/08 entry), "Attention to press coverage" (4/24/08 entry), and "Series of press interviews" (11/20/08 entry). Likewise, petitioner should not be reimbursed by the State for hours billed for a "website" including; "attention to assistance regarding website development" (6/13/08 entry), "E-mails, voicemails and teleconferences with client re: website content" (9/5/08 entry); and "teleconferences with client email new document for website" (9/16/08); or for letters, meetings and telephone calls to

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organizations for support of its litigation; "correspondence with Farm Bureau" (4/8/08 entry), and "correspondence regarding Local Government Review Board" (5/27/08 entry). See Affidavit of John J. Privitera ("Privitera Aff.") Exhibit B (entries by date). These non-legal activities fees should be excluded. See Exhibit G, Disputed Fees and Expenses (non-legal fees highlighted in pink).

14. It is incumbent upon the petitioner to explain how hours were spent and to identify the specific claim and the hours that pertain to it. See Hensley v. Eckerhart 461 U.S. 424 (1983). Petitioner fails to meet this standard by lumping together a series of claims, thereby leaving the Court and opposing counsel to guess the appropriate expenditures for each item (e.g.: "series of press interviews" is combined with "research regarding stays" (Privitera Aff., Ex. B, second 11/20/09 entry.) In addition, out of 240 billed days, petitioner seeks reimbursement for over 183 calls with Mr. Lewis, with 100 of those calls billed at the rate of \$300.00 an hour. These excessive and unreasonable charges and should be eliminated or reduced. Where ineligible charges are commingled with other potentially covered charges, those entries should be denied as a whole. See Exhibit G, Disputed Fees and Expenses.

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**E. Reduction in Rate for Work Not Requiring Attorney Skills**

15. Further, petitioner should not be compensated at the attorney rate for work which did not require an attorney's skills. Examples of such work includes: preparation of affidavits of service or other "boilerplate" documents (7/25/08, 11/19/08); calls to the Court's Clerk's Office (4/7/08, 4/22/08, 5/5/08); service and filing of papers (4/8/08, 4/15/08, 4/29/08, 5/9/08, 6/3/08, 6/15/08, 7/3/08, 7/14/08, 7/25/08, 8/8/08, 9/29/08, 11/17/08, 11/19/08, 12/1/08, 12/23/08, 1/5/09, 2/17/09, 4/1/09, 5/8/09; and items such as "retrieve documents" (3/10/09) and "attention to file" (6/4/08, 6/5/08, 7/8/08, 7/28/08). These clerical items should be reduced to a non-attorney rate.

**F. The Fees Requested Exceed the Prevailing Market Rate**

16. CPLR 8601(a) and 8601(b) permit an award of only reasonable attorney's fees at "prevailing market rates." Petitioner's fee request of \$300.00 per hour for an experienced attorney, \$175 for an attorney with three years experience, and its other related fee requests for attorneys, are excessive, and should be reduced by the Court to a reasonable, prevailing market rate for the community where the action lies.

17. Petitioner's fees should be reduced to a reasonable prevailing rate for Essex County. Reasonable hourly rates should be based on "the customary fee charged for similar services by

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dated August 28, 2009

lawyers in the community with like experience. . . ." See Rahmey v. Blum 95 A.D.2d 294, 302 (2d Dep't 1983); see also Luciano v. Olsten Corp. 109 F.3d 111 (2d Cir. 1997) (the relevant community for determining the prevailing rate is the community where the court sits).

18. According to a 2004 New York State Bar Association report entitled "The Economics of Law Practice in New York State," the "Median" rate for an equity partner in counties outside of NYC, L.I., Albany, Syracuse, Rochester and Buffalo is \$150 per hour, and the "Mean" rate is \$166 per hour. See Exhibit H, 2004 Desktop Reference on the Economics of Law Practice in New York State. The United State's District Court for the Northern District of New York, found in 2009 that a Washington, D.C. law firm should not be expected to be reimbursed for an out-of-district rate, and awarded \$210 per hour for attorneys with more than 10 years of experience, \$150 for attorneys with 5-10 years of experience and \$120 for attorneys with 0-4 years experience. See Alexander v. Cahill 2009 U.S. Dist. LEXIS 29165 at \*7 (N.D.N.Y Mar. 30, 2009).

19. On the basis of the foregoing, we respectfully submit that petitioner is not entitled to attorneys fees under Article 86. If the Court determines that an award is warranted, petitioner's fee application must be substantially reduced by

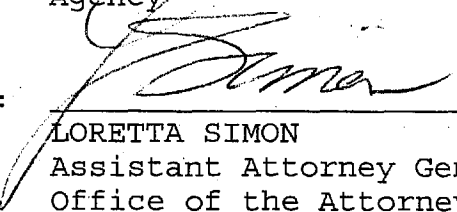
Affirmation of Loretta Simon  
dated August 28, 2009

\$87,829.95 for inappropriate charges as indicated in Exhibit G,  
and further reduced to reasonable prevailing rates for Essex  
County, New York.

Dated: Albany, New York  
August 28, 2009

ANDREW M. CUOMO  
Attorney General of the  
State of New York  
Attorney for Adirondack Park  
Agency

By:



LORETTA SIMON  
Assistant Attorney General  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, New York 12224-0341  
(518) 402-2724

Affirmation of Loretta Simon  
dated August 28, 2009

TABLE OF EXHIBITS  
SIMON AFFIRMATION

Exhibit A	Order Consolidating Actions signed June 10, 2008 and entered in the Essex County Clerk's office June 12, 2008
Exhibit B	Decision and Order on Motion, Appellate Division Third Department dated January 15, 2009
Exhibit C	Letter from APA to Department of Agriculture and Markets dated 12/4/07 Letter from APA to Department of Agriculture and Markets dated 12/3/07 Letter from Department of Agriculture and Markets to APA dated 11/26/07 Letter from APA to Department of Agriculture and Markets dated 8/7/07 Letter from Department of Agriculture and Markets to APA dated 6/29/07
Exhibit D	Affirmation of John F. Rusnica, Department of Agriculture and Markets, dated June 13, 2008
Exhibit E	Fees Ineligible for Reimbursement pursuant to CPLR §8601(a) Table
Exhibit F	<u>Ex-parte</u> stay order dated April 8, 2008 Letter of objection from the Office of the Attorney General dated April 8, 2008 Amended Order to Show Cause dated April 9, 2008
Exhibit G	Disputed Fees and Expenses Table
Exhibit H	Tables from "2004 Desktop Reference on the Economics of Law Practice in New York State"



At a term of the Supreme Court  
of the State of New York, held in  
and for the County of Essex at  
the Courthouse in Elizabethtown,  
New York, on the 24<sup>th</sup> day of  
April, 2008.

***PRESENT: HON. RICHARD B. MEYER, J.S.C. (Acting)***

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ESSEX

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***LEWIS FAMILY FARM, INC.,***

**PROCEEDING NO. 1**

*Petitioner,*

Index No. 315-08

*- against -*

RJI No.: 15-1-2008-0109

***ADIRONDACK PARK AGENCY,***

*Respondent.*

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STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ESSEX

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***ORDER  
CONSOLIDATING ACTIONS***

***ADIRONDACK PARK AGENCY,***

**ACTION NO. 2**

*Plaintiff,*

Index No.: 332-08

*- against -*

RJI No.: 15-1-2008-0117

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

*Defendants.*

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Petitioner/defendant Lewis Family Farm, Inc. having duly moved for an order  
consolidating the above-entitled proceeding and action, and the respondent /plaintiff



Adirondack Park Agency having duly cross-moved for an order transferring the consolidated actions to an Acting Supreme Court Justice who previously decided an action between the parties in 2007, and said motion and cross-motion having regularly come on to be heard; and

Upon reading and filing petitioner/defendant Lewis Family Farm, Inc.'s notice of motion dated April 14, 2008 and the affirmation of John J. Privitera, Esq. dated April 14, 2008, with exhibits, in support of said motion, and upon reading and filing the respondent/plaintiff Adirondack Park Agency's notice of cross-motion dated April 21, 2008 and the affirmation of Assistant Attorney General Loretta Simon dated April 21, 2008, with exhibits, in support of the cross-motion, and upon reading and filing the affirmation of John J. Privitera, Esq. dated April 23, 2008, with exhibits, in opposition to the cross-motion, and due deliberation having been had thereon, and the Court having issued a letter decision dated April 25, 2008, it is hereby

**ORDERED** that the said motion to consolidate Proceeding No. 1 and Action No. 2 be and the same hereby is granted without costs; and it is further

**ORDERED** that the cross-motion to transfer the consolidated actions to Hon. Kevin K. Ryan, Acting J.S.C., be and the same hereby is denied without costs.

Order signed this 10<sup>th</sup> day of June, 2008 at Elizabethtown, New York.

ENTERED  
 ENTER Joseph A. Provoncha  
 JOSEPH A. PROVONCHA  
 ESSEX COUNTY CLERK  
 DATED: 6/12/08

Richard B. Meyer  
 Acting Supreme Court Justice

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**EXHIBIT B**

Decided and Entered: January 15, 2009

Case # 504626  
504696

**In the Matter of LEWIS FAMILY  
FARM, INC., Appellant,  
v. \_\_\_\_\_**

**DECISION AND ORDER  
ON MOTION**

**NEW YORK STATE ADIRONDACK  
PARK AGENCY, Respondent.  
(Case No. 1.)**

**In the Matter of LEWIS FAMILY  
FARM, INC., Respondent,  
v  
ADIRONDACK PARK AGENCY,  
Appellant.  
(Case No. 2.)**

**ADIRONDACK PARK AGENCY,**  
Appellant,  
v  
**LEWIS FAMILY FARM, INC., et al.,**  
Respondents.  
(Case No. 3.)

Motion, pursuant to 22 NYCRR 800.9 (e), to designate Adirondack Park Agency as appellant, to consolidate appeals, and for extension of time to perfect appeal taken by Lewis Family Farm, Inc.

Upon the papers filed in support of the motion and the papers filed in opposition and in response thereto, it is

ORDERED that the motion to designate Adirondack Park Agency as appellant is granted, without costs, and it is further

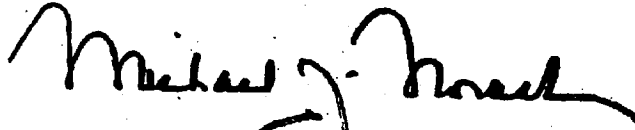
ORDERED that the motion to consolidate is granted, without costs, to the extent that the appeals shall be heard together and may be perfected upon a joint record on appeal, and it is further

ORDERED that the motion for an extension of time to perfect the appeal is granted, without costs. Adirondack Park Agency shall perfect the appeals in case Nos. 2 and 3 on or before March 2, 2009. The responding brief of Lewis Family Farms, Satim B. Lewis and Barbara Lewis, which shall also contain the points of argument on the appeal in case No. 1, shall be filed and served on or before April 1, 2009. The reply brief, if any in case Nos. 2 and 3, and the responding brief in case No. 1 of Adirondack

Park Agency, shall be filed and served on or before April 28, 2009. The reply brief, if any, in case No. 1, shall be filed and served on or before May 8, 2009.

CARDONA, P.J., MERCURE, ROSE, LAHTINEN and KANE, JJ., concur.

ENTER:



Michael J. Novack  
Clerk of the Court



NEW YORK STATE  
**Adirondack**  
parkagency

December 4, 2007

Honorable Patrick Hooker  
Commissioner  
NYS Department of Agriculture and Markets  
108 Airline Drive  
Albany, NY 12235

Dear Commissioner Hooker:

Thank you for your letter of November 26 to Chairman Stiles regarding the Lewis Family Farms matter. Chairman Stiles asked that I respond as the matter will be before the Board for advice in the near future.

We appreciate your detailed explanation of the various privileges provided to farm housing by New York law and will add this information to the record before the Agency. However, the Agency jurisdiction over single family dwellings in the Resource Management land use area classification is unambiguous. Farm housing is given a special privilege exempting the dwelling units from the APA Act overall intensity guidelines, but not from the fundamental permit requirement in this particular zoning classification. Your letter acknowledges the responsibility to obtain basic local permits, and in our view this is an equally fundamental element of the regulatory framework for the Adirondack Park established by the APA Act, the NYS Wild, Scenic and Recreational Rivers System Act and the NYS Freshwater Wetlands Act, a view supported by Judge Ryan in his decision regarding the Lewis Family Farms.

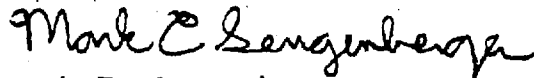
Lewis Family Farms have simply resisted the jurisdiction of the Agency in this limited context. The Agency has successfully and amicably resolved apparent conflicts with agricultural uses in the past when they have been brought to our attention. However, the place to work out details of specific residential construction within the Resource Management land use area is within the Agency's permit process where status as farm housing gives privileges regarding overall intensity guidelines, as well as restrictions on future use for non-agricultural purposes.

Honorable Patrick Hooker  
December 4, 2007  
Page 2

We will continue to work closely with your staff regarding Agriculture District status of properties and appreciate their assistance as we have tried to be responsive to landowner concerns. However, the current Lewis Family Farm issue does not involve agricultural uses or agricultural use structures as our statute defines those activities, and to suggest the contrary confuses a clear exemption of those uses and structures from the basic regulatory structure of the APA Act.

We look forward to your Agency's continuing advice as we develop clear and consistent communications for the farm communities in Essex County and the Park.

Sincerely,



Mark E. Sengenberger  
Interim Executive Director

MES:dal

cc: Curtis F. Stiles, Chairman  
John S. Banta, Counsel




December 3, 2007

Honorable Patrick Hooker  
Commissioner  
NYS Department of Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235

Dear Commissioner Hooker:

Thank you for your letter of November 26 regarding Lewis Family Farms. As this is a pending matter before the Agency which the Board will have to address early in the New Year, I have forwarded your detailed information to Mr. Sengenberger for his attention and addition to the record in the matter.

Sincerely,

  
Curtis F. Stiles  
Chairman

CFS:dal

cc: Mark E. Sengenberger





STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS

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Eliot Spitzer  
Governor

Patrick Hooker  
Commissioner

November 26, 2007

Curt Stiles, Chairman  
Adirondack Park Agency  
PO Box 99  
NYS Route 86  
Ray Brook, NY 12977

Dear Mr. Stiles:

Congratulations on your recent appointment to Chairman of the Adirondack Park Agency. In that capacity, I am seeking your assistance in trying to resolve an issue between Sandy and Barbara Lewis, Town of Essex, Essex County and the Adirondack Park Agency. Mr. and Mrs. Lewis own and operate one of the State's largest certified organic farms. They have vastly improved their landholdings and have removed many of the older homes on the various farms that have been purchased to make up their landholdings. The Lewis' are in the process of constructing farm worker housing on the farm and were of the belief that such housing is exempt from the APA permitting process. The Department of Agriculture and Markets supports the Lewis' efforts in their attempt to provide modern, energy efficient housing for their employees. The Lewis farm is located within Essex County Agricultural District No. 4, a county adopted, State certified, agricultural district.

On August 8, 2007 one of my staff, Robert Somers, Manager of the Department's Farmland Protection Program, met with Mark Sengenberger, John Banta, Anita Deming and others to discuss the APA's treatment of farm worker housing and temporary greenhouses under State Law. Dr. Somers informs me that the APA maintains that the Lewis' must obtain a permit from that agency prior to constructing such housing even though the Agricultural Districts Law is clear that under certain circumstances farm worker housing is an agricultural structure and part of a "farm operation".

AML §301, subd. 11, defines a "farm operation", in part, as "...the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section and "timber processing" as

Curt Stiles, Chairman (cont.)  
Adirondack Park Agency  
Page 2

defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

Farm worker housing, including mobile homes (also known as "manufactured homes"), modular or stick built structures, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or modular homes for farm worker housing is a common farm practice. Manufactured, modular and stick built homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. Farm labor housing used for the on-farm housing of permanent and seasonal employees is part of a farm operation.

The Department's *Guidelines for Review of Local Laws Affecting Farm Worker Housing* (copy enclosed) provides that the term "on-farm buildings" includes housing used as a residence for permanent and seasonal employees. Generally, in evaluating the use of farm labor housing under the AML, the Department considers whether the housing is used for seasonal and/or full-time employees and their families; whether the housing is provided by the farm operator (i.e., the farmer must own the housing); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation (and their family) to be protected under AML §305-a. The Department has interpreted a seasonal employee to mean migrant workers or workers employed during the season of a crop; i.e., from cultivation to harvest. The Department has not considered part-time employees to be "full-time or seasonal."

Although the Department considers farm worker housing to be part of a farm operation for the purposes of administering AML §305-a, the Department has found that local laws which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code § 102.1(5)] and Health Department requirements for potable water and sewage disposal, are not unreasonably restrictive. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

State Building Code §101.2(2) provides an exemption from the Building Code for "[a]gricultural buildings used solely in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation." State Building Code §202 defines an agricultural building as "[a] structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This

Curt Stiles, Chairman (cont.)  
Adirondack Park Agency  
Page 3

structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public." Therefore, a farm operator must obtain a local building permit for farm worker housing and the housing is subject to the requirements of the State Building Code. It is my understanding that the Lewis farm has obtained the necessary permits from the Town to construct such housing.

The Office of Real Property Services also agrees with the Department's position that housing for farm workers is an agricultural structure. Farm worker housing may qualify for a 10-year real property tax exemption by filing with the local assessor RPT Form RP-483. This is a tax exemption that is applied to newly constructed agricultural and horticultural buildings and structures. I have enclosed the instructions page for the exemption which clearly states that under certain circumstances, farm worker housing is considered an agricultural building.

The Department's position on farm worker housing has been supported by the State's Court of Appeals (Town of Lysander v. Hafner, 98 N.Y.2d 558 [2001]) and pursuant to AML §305, subd. 3. "...It shall be the policy of all State agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end..."

I would like to discuss this issue with you further. Please contact me at your earliest convenience.

Sincerely,



Patrick Hooker  
Commissioner of the New York Department  
of Agriculture and Markets

Enclosures



August 7, 2007

Mr. Bill Kimball  
Director, Division of Agricultural  
Protection and Services  
NYS Department of Agriculture and Markets  
10B Airline Drive  
Albany, NY 12235

Dear Mr. Kimball:

Re: Agricultural Uses

Thank you for your letter dated June 29, 2007, received July 5, expressing an interest in further understanding of Agency jurisdiction over agriculture and related activities, and an interest in educating our staff as to your Department's responsibilities. We look forward to meeting with Department staff on August 8, and send this letter in order to further the progress of our meeting.

The Adirondack Park Agency Act generally excepts "agricultural use" and "agricultural use structure" from the regulatory provisions of the statute. However, much of the Park's agricultural land is zoned or classified Resource Management where all new subdivision, residential and commercial development requires an Agency permit including "agricultural service uses" and "mining." Therefore, it is important to understand the definitions and extent of various activities listed above under the Adirondack Park Agency Act.<sup>1</sup> Further, there are circumstances where agricultural structures are subject to Adirondack Park Agency Act shoreline setback criteria established as a matter of law in Section 806 of the statute, and to the requirements of the NYS Freshwater Wetlands Act or Wild, Scenic and Recreational Rivers System Act, both administered by the Park Agency within the Adirondack Park. (See 9 NYCRR Parts 577 and 578)

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<sup>1</sup> NYS Executive Law, Article 27.

P.O. Box 99 • NYS Route 86 • Ray Brook, NY 12977 • 518 891-4050 • 518 891-3938 fax • [www.apa.state.ny.us](http://www.apa.state.ny.us)

R001361

Any analysis of Agency jurisdiction must start with the statutory definitions, NYS Executive Law §§802(4), (5), (6), (7), (8) and (17), quoted below:

4. "Accessory use" means any use of a structure, lot or portion thereof that is customarily incidental and subordinate to and does not change the character of a principal land use or development, including in the case of residential structures, professional, commercial and artisan activities carried on by the residents of such structures.

5. "Accessory structure" means any structure or a portion of a main structure customarily incidental and subordinate to a principal land use or development and that customarily accompanies or is associated with such principal land use or development, including a guest cottage not for rent or hire that is incidental and subordinate to and associated with a single family dwelling.

6. "Agricultural service use" means any milk processing plant, feed storage supply facility, farm machinery or equipment sales and service facility; storage and processing facility for fruits, vegetables and other agricultural products or similar use directly and customarily related to the supply and service of an agricultural use.

7. "Agricultural use" means any management of any land for agriculture; raising of cows, horses, pigs, poultry and other livestock; horticulture or orchards, including the sale of products grown or raised directly on such land, and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds.

8. "Agricultural use structure" means any barn, stable, shed, silo, garage, fruit and vegetable stand or other building or structure directly and customarily associated with agriculture use.

17. "Commercial use" means any use involving the sale or rental or distribution of goods, services or commodities, either retail or wholesale, or the provision of recreation facilities or activities for a fee other than any such uses specifically listed on any of the classification of compatible uses lists.

It is clear that "agricultural uses" involve the growing of crops and raising of animals, as well as the customary actions necessary to be able to sell those items (i.e., actions necessary to move the farm product off the farm in saleable form). "Agricultural service use" is a separately defined term, and clearly includes actions which involve the further processing of agricultural products. Under the jurisdictional scheme of the Adirondack Park Agency Act (Executive Law, Article 27), agricultural uses are generally non-jurisdictional. However, agricultural service uses are treated almost identical to commercial uses: they are Class A or B regional projects, depending on size. Hence, the difference between agricultural use and agricultural service use is critical to a determination of Agency jurisdiction.

The question has arisen as to what "processing" (if any) of farm products by a farmer is allowed before that activity becomes an agricultural service use. A strict reading of the agricultural service use definition alone would result in a permit requirement for on-farm processing of agricultural products. There are two other considerations, however:

- (1) By the language including the "sale of products" as part of the agricultural use definition, it is clear that "processing" necessary to move the product off the site is contemplated. For example, apples are typically stored, graded and packaged for market in bags and boxes rather than being sold in bulk as "orchard run." These "processing for sale" activities would be accessory to the agricultural use.
- (2) The definition of "accessory use" contemplates the possibility that all other listed land uses may, in fact, have accessory use activities associated with them. The parameters for being "accessory" are established in the definition of "accessory use." Therefore, it is clear that an "agricultural use" may have accessory uses associated with it (as could an agricultural service use).

In general, the Agency has treated on-farm processing of the agricultural products produced on that farm as accessory to the agricultural use. To retain that characterization, the activity must be "customary" for a farm operation, and must be both "incidental and subordinate" to the farm operation, such that it does not change the character of operations from the principal use, the agricultural use.

There is no clear-cut rule regarding operations involving the processing of the products of other farms, in addition to the products of the farm operated by the processor. Shared processing of Farm A and Farm B products at Farm A might remain "customary, incidental and subordinate" to the agricultural use on Farm A. However, where significant new land use and development is required to undertake such activity, it may not be considered "accessory." Hence, any farm contemplating new development to facilitate processing of farm products, particularly products from other farms, should seek written advice from the Agency in the form of a "jurisdictional determination."

Another matter that is given special status by the Adirondack Park Agency Act is the construction of employee housing on-farm. The definition of "principal building", the core concept behind the Park's overall intensity guidelines and jurisdiction over new subdivision, provides:

All agricultural use structures and single family dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use and members of their respective immediate families, will together constitute and count as a single principal building. (802[50](g))

The practical import of this is that all single family dwellings and mobile homes placed on a farm for use by farm employees will not constitute "principal buildings." The separate itemization of "agricultural use structure," "single family dwelling" and "mobile home" in the above definition preserves the separate character of these uses for purposes of the jurisdictional criteria of Section 810 of the Act. Section 810 contains the lists of Class A and B regional projects which are subject to Agency jurisdiction.<sup>2</sup>

Barns, stables and silos need no Class A or B regional project permit from the Agency because they are agricultural use structures.<sup>3</sup> A single family dwelling not associated with a jurisdictional subdivision requires no permit except in areas classified Resource Management or Industrial Use.<sup>4</sup> New two-

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<sup>2</sup> In addition, the "compatible use" lists of Section 805 separately itemize these uses (uses not listed as "compatible" are also jurisdictional under the provisions of Section 810).

<sup>3</sup> As noted in the first paragraph, these structures may require a shoreline variance or a wetlands or rivers permit from the Agency.

<sup>4</sup> See footnote 3.

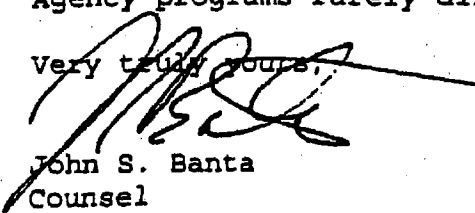
Mr. Bill Kimball  
August 7, 2007  
Page 5

family and larger multiple family dwellings require an Agency permit in all land use areas except Hamlet. If a new residential structure requires a permit due to numbers, lot size, location, or because it is a multiple family dwelling, it is a Class A or B regional project (requires a permit) regardless of the intent to use the housing for farm employees. Finally, for those residential structures which are single family dwellings and mobile homes, they will not constitute a separate "principal building" provided they are occupied by the farmer of land or his farm employees.

Purchasers of land that is subject to a recorded and effective Agency permit take the land subject to the permit as it was recorded. This may raise questions of conflict between permit conditions intended to address the new development originally contemplated in the permit (for instance, screening, landscaping and vegetation cutting restrictions) and newly proposed farm operations that involve agricultural uses and agricultural use structures. This will be particularly true if the agricultural uses involve the land which is already identified as the location of the permitted dwellings or appurtenant facilities, or which is subject to specific conditions regarding vegetative cutting or planting. The Agency will require permit amendments to reflect the necessary change in the existing permit. The amended permit will address the new agricultural uses, may treat them as minor amendments, and may also release them from further review. Minor amendments can be routinely and promptly processed; however, the landowner must obtain the amendment if the original project design or permit conditions will not be adhered to.

We look forward to continuing our dialogue. Agency staff appreciates the opportunity to communicate and build awareness of farm concerns because, at least when properly functioning, Agency programs rarely directly involve farm activities.

Very truly yours,



John S. Banta  
Counsel

JSB:dal

cc: Dr. Robert Somers  
Ross Whaley, Chairman  
Mark Sengenberger, Acting Executive Director  
Stephen Erman, Special Assistant for Economic Affairs

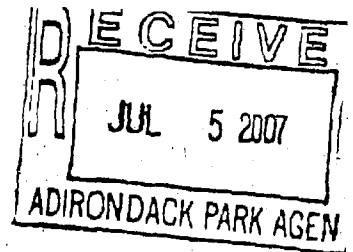
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STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS  
10B Airline Drive  
Albany, New York 12235

Division of Agricultural Protection  
and Development Services  
518-457-7078  
Fax: 518-457-2718



June 29, 2007

John Banta, Esq.  
Chief Counsel  
Adirondack Park Agency  
PO Box 99  
NYS Route 86  
Ray Brook, New York 12977

Dear Mr. Banta:

Over the past two months, the Department has received several inquiries concerning enforcement actions taken by the Adirondack Park Agency against farm operations located within the Adirondack Park. One of the farms is located within a county adopted, State certified, agricultural district, but the other farm is not located within a district. According to the landowner, however, she has requested that her property be included in the corresponding agricultural district upon its next review.

The Commissioner's Office has asked me to obtain information on the APA's administration of its statute and regulations as applied to farm operations. I have read portions of Article 27 of the Executive Law, but several questions concerning the Law and its application to farm operations remain.

It appears that "agricultural use" and related "agricultural use structures" are exempt from APA's permitting requirements (Executive Law § 810, subd. 1). According to the "Summary of Adirondack Park Agency Authority Over Land Use and Development and Subdivisions" table provided on the APA web site, agricultural use and agricultural use structures are considered non-jurisdictional projects and no APA permits are required, regardless of the land classification where the property resides. If this interpretation is correct, when would a permit from the APA be required for an agricultural use or the construction of associated structure(s)?

One of the farmers that contacted the Department has been cited by the APA for constructing farm worker housing without first receiving a permit from the Agency. The landowner indicated that prior to construction, a building permit was obtained from the Town. These new residences, five in total, were intended to replace numerous older

John Banta, Esq.  
Adirondack Park Agency  
Page 2

homes that had been removed from the farm. Although the demolished homes may have been located on more than one parcel, under the Agriculture and Markets Law, "farm operations" are defined, in part, as consisting of owned or rented land that may be contiguous or non-contiguous to one another. The Department also considers "farm worker housing" to be agricultural structures and also protected under the AML. Does the APA consider farm worker housing to be an agricultural use structure as defined in § 802, subd. 8 of the Executive Law? If so, why would a farmer be required to obtain a permit from the APA to construct an "agricultural use structure?"

Another farmer received a letter from the APA concerning the placement of a temporary greenhouse on their start-up farm. In 1992, the Executive Law was amended to define temporary greenhouses as "specialized agricultural equipment." [Executive Law §372(17)] Executive Law §372(3) states that temporary greenhouses are not buildings for purposes of the State Building Code. Real Property Tax Law §483-c exempts temporary greenhouses from taxes, special ad valorem levies and special assessments because they too, consider such greenhouses as "specialized agricultural equipment" and not a building or structure. The Department has protected the erection and use of temporary greenhouses as part of a farm operation for nursery/greenhouse operations, produce farms and livestock farms. It would seem that the APA would also consider such greenhouses to be equipment and not a structure. Would the APA consider "temporary greenhouses" to be equipment or if not, wouldn't such structures, if used for agricultural purposes, be considered an agricultural use structure and exempt from the APA permitting requirements?

In order to better advise agricultural enterprises within the Park, it is important that the Department understands how the APA's rules and regulations are applied to farm operations. There are many viable agricultural enterprises that are located within both the Park and an agricultural district.

I look forward to working with you so that both Agencies can clarify their interpretations as to what constitutes an agricultural use, practice and structure. If you have any immediate questions concerning this request, please contact Robert Somers, Manager of the Department's Agricultural Protection Unit, at 457-8887.

Sincerely,

  
Bill Kimball  
Director

R001367



**STATE OF NEW YORK SUPREME COURT  
ESSEX COUNTY**

-----X

**LEWIS FAMILY FARM, INC.,**

**Petitioner,**

**v.**

**NEW YORK STATE ADIRONDACK  
PARK AGENCY,**

**Respondent.**

-----X

**ADIRONDACK PARK AGENCY,**

**Plaintiff,**

**v.**

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

**Defendants.**

-----X

**AFFIRMATION**

**INDEX NO. 315-08**

**INDEX NO. 332-08**

JOHN F. RUSNICA affirms the following under penalty of perjury:

1. I am an attorney duly admitted to practice before the courts of the State of New York. I am employed as an Associate Attorney with the New York State Department of Agriculture and Markets (hereinafter referred to as "Department") and work with the Division of Agricultural Protection and Development Services. I assist this division with its administration and enforcement of Agriculture and Markets Law (AML) Article 25-AA, Agricultural Districts, which establishes and implements New York's agricultural districts program.

2. I submit this affirmation to explain the Department's role with regard to administering AML Article 25-AA which is involved in the underlying Special Proceeding. The proceeding seeks to annul the March 25, 2008 Determination of the Respondent, Adirondack Park Agency (the "APA" or "Respondent"). The APA's determination held that Petitioner's three single family residences, characterized as "farmworker housing," violated the APA Act and the Wild and Scenic Rivers Act because they were constructed in a resource protection

zone without permits, and were not exempt "agricultural use structures" under the APA Act, Executive Law § 802(8).

3. Article XIV, Section 4 of the New York State Constitution provides, in part, that the "policy of the State shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products." AML Article 25-AA, enacted in 1971 and referred to as the Agricultural Districts Law (ADL), forms the cornerstone of New York's agricultural protection program and implements the Constitutional directive to preserve and protect the State's agricultural lands as important State resources. This is accomplished, in part, by promoting the retention of farmland in active agricultural use.

4. AML Article 25-AA §300 recognizes the Constitutional directive and "provide[s] a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance." County governments may create agricultural districts [AML §303], which consist primarily of viable farmland. Land in an agricultural district receives the benefits and protections of both the general agricultural preservation policies of AML §300, and the specific benefits and protections of AML §305, including an agricultural assessment [AML §305(1)]; a limitation on the power of special improvement districts to impose assessments or special ad valorem levies for sewer, water or other services, on farmland within a district [AML §305(5)]; and notice of intent requirements which provide for review of public acquisitions of land, and expenditures for public improvements, within agricultural districts [AML §305(4)]. I am informed that the Petitioner's land is located within Essex County Agricultural District, No. 4, a county-adopted, State certified agricultural district.

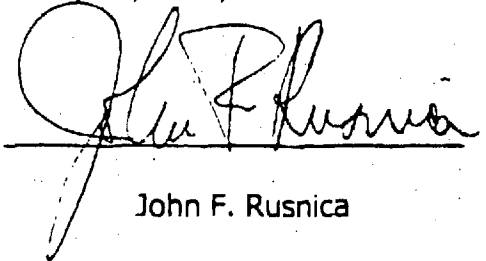
5. Farm operations in an agricultural district are protected by AML §305-a, which prohibits local governments from unreasonably restricting or regulating such operations located within an agricultural district unless it can be shown that the public health or safety is threatened. Upon request, the Department of Agriculture and Markets evaluates, on a case-by-case basis, the reasonableness of a specific local requirement or process imposed on a farm operation. If warranted after that review, the Commissioner may issue an Order, or bring an action against the local government to enforce the §305-a prohibition. Section 305-a, 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.

6. In its administration of AML §305-a the Department has established guidance documents which explain the Department's position on matters addressed under prior reviews. For example, the Department has issued Guidelines for Review of Local Laws Affecting Farm Worker Housing explaining that the Department has consistently determined that "on-farm buildings" include farm labor housing and those buildings are protected by AML §305-a as part of a farm operation. This determination was upheld in *Town of Lysander v. Hafner*, 96 N.Y.2d 558 (2001).

7. Farming is also protected by AML §308, the "Right to Farm" law, which provides for the Commissioner to issue opinions as to whether particular agricultural practices are sound and whether a particular land use is "agricultural in nature." On February 1, 2008, the Commissioner issued an "agricultural in nature" opinion [AML §308(4)] at the request of the Petitioner stating, consistent with the Department's long-standing 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. The opinion concluded that the use of the land in question underlying this proceeding, for the siting and construction of farm worker housing, is agricultural in nature. The February 1, 2008 opinion was advisory, and provides the opinion of the Department regarding the nature of the Lewis Farm operation's use of its land for farmworker housing. See copy of Commissioner Hooker's February 1, 2008 opinion, attached hereto as Exhibit A.

8. AML §305(3) applies to State agencies and provides "It shall be the policy of all State agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal, grants, loans or other funding." The Department has used this provision on a case-by-case basis to consult with other State agencies and to negotiate appropriate resolutions when projects constructed, reviewed or funded by State agencies have had potential negative impacts on farm operations located within agricultural districts.

9. The Department has participated in discussions over the years with APA staff, Farm Bureau, and Cornell Cooperative Extension, relating to agriculture in the Adirondack Park. Here, the Department conveyed its policy concerning farm worker housing to the APA, and specifically expressed its views regarding the APA's regulatory involvement with Lewis Farm's worker housing from the perspective of the Agriculture and Markets Law. See, Record, Item 10, Reply Affirmation of Paul Van Cott, January 29, 2008, Exhibit A.



John F. Rusnica

Dated: June 13, 2008

pp. 410-412



STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS

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Eliot Spitzer  
Governor

Patrick Hooker  
Commissioner

February 1, 2008

Sandy and Barbara Lewis  
The Lewis Family Farm, Inc.  
1212 Whallons Bay Road  
Essex, New York 12936

**RE: Section 308, subd. 4 Opinion Concerning Farm Worker Housing**

Dear Mr. and Mrs. Lewis:

On January 9, 2008, the Department received an e-mail from your attorney, John J. Privitera, requesting, on your behalf, an opinion pursuant to Agriculture and Markets Law (AML) §308, subdivision 4 as to whether land used for the siting and construction of farm worker housing is considered "agricultural in nature." The evaluation of land uses under this provision is conducted on a case-by-case basis upon information submitted and in consultation with the Advisory Council on Agriculture.

You indicate that Lewis Family Farm, Inc. is a USDA certified organic farm located in the Town of Essex, Essex County. Farm Manager Dr. Marco Turco reports that the farm encompasses approximately 1,200 acres and includes 826 cultivated acres, pastures, a sugar-bush, and a deciduous and conifer forest. The farm produces certified organic beef animals and raises cows, bulls, heifers and steers. Additionally, the farm produces a range of crops, which have included hard white winter wheat; soybeans; alfalfa; mixed, cool-season grasses; corn; spelt and triticale. Department staff confirmed that the land in question is located within Essex County Agricultural District No. 4, a county adopted, State certified agricultural district.

Dr. Robert Somers, Manager of the Department's Agricultural Protection Unit, visited the farm on January 9, 2008. Dr. Somers observed that four modular farm worker houses have been constructed on the property. Three of the farm worker houses are clustered in a U-shaped pattern at the corner of Christian and Whallons Bay Roads. You indicated that two of the four homes are complete; the other two homes have completed exteriors but are unfinished inside. You explained that one is occupied by the farm manager and the other, by a person working on the farm. You indicated that these three homes replaced an existing home and barn complex that were removed prior to construction. You indicated that the three homes share a common

R00410

driveway, septic leach field and water source (well). The fourth farm worker house is located off of Whallons Bay Road at the crest of a hill. You explained that the farm manager occupies this home because it has a strategic view of most of the farm, including the barns and the three new farm homes. You stated that all four of the modular homes were placed on poured concrete foundations with basements.

You indicate that the farm housing which was located on the property when it was purchased was old, energy inefficient and contaminated with mold. You stated that you decided to remove those structures and construct new homes for your farm workers and that suitable off-farm housing is not available within the area. You also indicate that it is your intent to provide quality housing for your workers in an effort to recruit employees that will bring their families to the farm and become vested in the farm and the community; and you hope that the housing will help recruit the most qualified workers to your state-of-the-art farm.

In considering whether a particular land use is agricultural in nature, the Department takes into account the definition of "farm operation" contained in AML §301. A land use does not need to fall within the meaning of that term in order to be "agricultural in nature." Examination of the definition is helpful, however, in considering the nature of a land use since it relates to agricultural activities. Included within the definition of "farm operation" (AML §301, subd. 11) are "[t]he land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise...."

Farm worker housing, including mobile, modular or stick-built homes, are an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long work day, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of such homes for farm worker housing is a common farm practice. On-farm housing provides a practical and cost effective means for farmers to meet their farm labor housing and recruitment needs.

In evaluating the use of farm labor housing, the Department considers whether the housing is used for seasonal and/or full-time employees; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the worker is an employee of the farm operator and employed in the farm operation(s); and whether the farm worker is a partner or owner of the farm operation. The Department does not consider the residence of the owner or partner of the farm operation to be part of a "farm operation" as defined in AML §301, subd. 11. 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.

Dr. Somers, during his visit to the farm, confirmed that farm worker housing was needed on the farm; existing residential structures had been removed, except for the



home of the landowner and a guest house; and that the three clustered farm worker houses could not be readily separated or easily subdivided due to the shared driveway, septic leach field, and electrical connection to the grid and water supply.

Based upon the information provided by you and Dr. Marco Turco, the Department's farm visit, and upon consultation with the Advisory Council on Agriculture, it is my opinion that use of the land in question for the siting and construction of farm worker housing is agricultural in nature.

Sincerely,



Patrick Hooker  
Commissioner

cc: Advisory Council on Agriculture  
Essex County Agricultural and Farmland Protection Board



**APA v. Lewis Family Farm, Index No. 332-08 (State Enforcement Action)**  
**Fees Ineligible for Reimbursement pursuant to CPLR §8601(a)**

DATE	TIMEKEEPER	HOUR	BILLABLE RATE	FEES BILLED	DESCRIPTION
05/13/08	JFL	4.50	150	\$675.00	Attention to service issues and briefing schedule for enforcement action and fax 78 proceeding; teleconference with and letters to Loretta Simon, Esq. conference with John J. Privitera regarding scheduling, legal research in preparation of Motion to Dismiss
05/15/08	JFL	2.25	150	\$337.50	Attention to Amended Complaint and Agency's cross-motion in Appellate Division; conference with John J. Privitera and began drafting opposition affidavit.
05/19/08	JJP	1.00	300	\$300.00	Telephone calls with Sandy Lewis and Barbara Lewis and research scope of defenses regarding civil case
05/20/08	JFL	3.75	150	\$562.50	Reviewed legal research regarding collateral estoppel; began drafting Memo of Law in Support of Petition and Motion to Dismiss, attention to Notice of Entry of Third Department's Decision on the Stay.
05/22/08	JFL	2.25	150	\$337.50	Attention to Memorandum of Law in Support of Article 78 Petition and Motion to Dismiss
05/23/08	JFL	4.00	150	\$600.00	Conferences with John J. Privitera; extended attention to memorandum of law in support of Article 78 proceeding and motion to dismiss.
05/26/08	JFL	1.00	150	\$150.00	Attention to memorandum of law in support of petition and motion to dismiss
05/28/08	JFL	7.90	150	\$1,185.00	Extended attention to memorandum of law in support of Article 78 petition and motion to dismiss, legal research regarding individual corporate liability and substantial evidence.

**APA v. Lewis Family Farm, Index No. 332-08 (State Enforcement Action)**  
**Fees Ineligible for Reimbursement pursuant to CPLR §8601(a)**

DATE	TIMEKEEPER	HOUR	BILLABLE RATE	FEES BILLED	DESCRIPTION
06/02/08	JFL	9.50	150	\$1,425.00	Extended attention to finalizing and drafting Memorandum of Law in Support of Petition and Motion to Dismiss, Affirmation and Notice of Motion, teleconferences with client and Judge Meyer's chambers; conferences with John J. Privitera re: strategy
07/11/08	JFL	4.25	150	\$637.50	Teleconferences with client; drafted Answer to Amended Summons and Complaint, <del>teleconference with Cynthia Peppers</del> , correspondence from Judge Meyer
07/15/08	JFL	2.25	150	\$337.50	Attention to Farm's Answer of Enforcement action, e-mail and teleconference with client.
07/23/08	JJP	2.25	300	\$675.00	Draft papers in support of summary judgment and attention to answer
07/23/08	JJP	2.25	300	\$675.00	Draft papers in support of summary judgment and attention to answer
07/23/08	JFL	4.75	150	\$712.50	Attention to drafting summary judgment memorandum of law; conference with John J. Privitera; teleconference with client.
07/24/08	JJP	1.50	300	\$450.00	Attention to summary judgment brief
07/24/08	JFL	3.75	150	\$562.50	Attention to summary judgment papers; conference with John J. Privitera regarding strategy.
07/25/08	JJP	2.00	300	\$600.00	Series of telephone calls with Sandy Lewis; draft brief in support of motion for summary judgment.
07/25/08	JFL	3.25	150	\$487.50	<del>Attention to Third Department's Decision regarding extension</del> , drafted and served Notice of Entry on Loretta Simon, Esq; attention to summary judgment motion papers

**APA v. Lewis Family Farm, Index No. 332-08 (State Enforcement Action)**  
**Fees Ineligible for Reimbursement pursuant to CPLR §8601(a)**

DATE	TIMEKEEPER	HOUR	BILLABLE RATE	FEES BILLED	DESCRIPTION
07/28/08	JJP	1.25	300	\$375.00	Revise answer in counterclaim/enforcement case, outline portion of brief.
07/28/08	JFL	2.75	150	\$412.50	Attention to Summary Judgment papers; completed first draft of Memorandum of Law.
07/28/08	JJP	1.75	300	\$525.00	Draft portions of the Answer and Brief in support of summary judgment
07/29/08	JFL	1.25	150	\$187.50	Attention to summary judgment motion papers; conference with John J. Privitera
07/30/08	JJP	5.00	300	\$1,500.00	Draft brief and revise answer.
07/30/08	JFL	7.25	150	\$1,087.50	Extended attention to motion for summary judgment papers, conferences with John J. Privitera; prepared record for exhibit, teleconference with client, drafted John J. Privitera Affidavit; finalized and served answer.
07/31/08	JJP	4.75	300	\$1,425.00	Draft brief in support of summary judgment.
07/31/08	JFL	8.75	150	\$1,312.50	Extended and extensive attention to summary judgment papers, teleconferences with client, conferences with John J. Privitera; reviewed APA's Papers Opposing Article 78 Petition.
08/01/08	JFL	7.75	150	\$1,162.50	Extended attention to drafting, revising and finalizing summary judgment papers; conferences with John J. Privitera, teleconferences with client; served motion on Loretta Simon and Cynthia Feathers
08/11/08	JFL	1.00	150	\$150.00	Attention to Agency's cross-motion for summary judgment, e-mail to Loretta Simon, Esq; teleconference with client.

**APA v. Lewis Family Farm, Index No. 332-08 (State Enforcement Action)**  
**Fees Ineligible for Reimbursement pursuant to CPLR §8601(a)**

DATE	TIMEKEEPER	HOUR	BILLABLE RATE	FEES BILLED	DESCRIPTION
08/12/08	JFL	7.75	150	\$1,162.50	Conference call with client and John J. Privitera; extended attention to Memorandum of Law In Reply to Summary Judgment Motion and Opposing the Agency's Motion.
08/13/08	JFL	4.25	150	\$637.50	Conference with John J. Privitera regarding strategy on opposing Agency's summary judgment motion attention to drafting Reply Memorandum of Law and Affidavits
08/14/08	JJP	3.00	300	\$900.00	Draft reply brief.
08/15/08	JFL	3.50	150	\$525.00	Attention to finalizing summary judgment opposition and reply papers, conferences with John J. Privitera, Esq., teleconferences with client
08/18/08	JFL	1.50	150	\$225.00	Conference calls with John J. Privitera, Esq. and client, drafted demand letter to Loretta Simon.

**TOTAL: \$22,297.50**

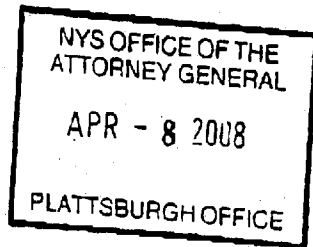
~~Involves non-legal expenses for publicity, website, meeting with allies, etc.~~

~~Involves Lewis Farm II (Essex County Index No. 498-07)~~

~~Involves billing attorney rate for paraprofessional tasks~~



Personally served  
2:05 p.m.



At a Special Term of the Supreme Court of the State of New York, held in and for the County of Essex, at the Essex County Courthouse, in Elizabethtown, New York, on the 8<sup>th</sup> day of April, 2008.

PRESENT: Hon. RICHARD B. MEYER

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

ORDER TO SHOW CAUSE

Petitioner,

-against-

Index No. 315-08  
RJ No.

ADIRONDACK PARK AGENCY,

Respondent.

Upon reading and filing the annexed affidavits of Barbara A. Lewis and John J. Privitera, sworn to April 7, 2008, the papers thereto attached and the papers therein referred to, and on motion of McNamee, Lochner, Titus & Williams, P.C., attorneys for Petitioner, it is

**ORDERED**, that Respondent or his attorney show cause at an Individual Assignment Term of the court to be held in and for the County of Essex, at the county Court House in Elizabethtown, New York, on April 11, 2008, at <sup>1:30</sup>~~9:30~~ o'clock in the <sup>AFTER</sup>~~forenoon~~ of that day, or as soon thereafter as counsel can be heard, why an order should not be granted staying the Respondent's Enforcement Committee Decision of March 25, 2008, which is being challenged in the Article 78 proceeding herein, until the determination of the appeal from said decision, and it is further



**ORDERED**, that in the meantime and until the hearing and determination of this order to show cause, all proceedings on the part of the petitioner in the above cause be stayed.

Let service of a copy of this Order and a copy of the papers upon which it was granted, by personal / facsimile service upon Respondent at:

Adirondack Park Agency  
1133 NYS Route 86  
Ray Brook, NY 12977  
Fax: 518-891-3938

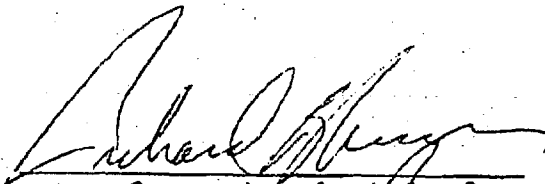
NYS Office of the Attorney General  
Plattsburgh Regional Office  
43 Durkee Street, Suite 700  
Plattsburgh, NY 12901  
Fax: 518-562-3294

REM on or before April 8, 2008, <sup>AT 5:00 PM</sup> be deemed good and sufficient service upon Respondent.

Papers in opposition to this motion, if any, are to be served upon Petitioner's counsel so as to be received by April 11, 2008, <sup>BY 10:00 A.M.</sup> and filed with the Court on the same date, and REM

~~Reply papers, if any, shall be served upon counsel for defendants and filed with the Court, no later than April \_\_\_\_\_, 2008.~~

Dated: April 8, 2008  
ELIZABETHTOWN, New York

  
Hon. RICHARD B MEYER  
Supreme Court Justice (ACTING)

**ENTER:**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

April 8, 2008

**BY FACSIMILE AND MAIL**

Honorable Richard B. Meyer  
Supreme Court  
Clinton County  
137 Margaret Street  
Plattsburg, New York 12901

Re: Lewis Family Farm Inc., v. New York State  
Adirondack Park Agency  
Index No.: 315-08

Dear Justice Meyer:

The Office of the Attorney General was served with an Order to Show Cause with a restraining order this afternoon from John J. Privitera, attorney for the petitioner in the above-captioned matter, indicating that the Court issued an ex parte stay presented by the petitioner, which restrains the State Adirondack Park Agency ("APA"): "all proceedings on the part of the petitioner in the above cause be stayed" until a scheduled April 11, 2007 hearing. Respectfully, the Court's ex-parte restraint violates CPLR 6313(a) and must be vacated. Moreover, I respectfully request a conference call with the parties and the Court as soon as possible.

As petitioner knows - and knew before this application - the Attorney General's Office is representing the APA in this matter. I was not notified in advance of the appearance before your Honor. CPLR § 6313 (a) plainly prohibits ex parte restraining orders against the State and other government entities ("No temporary restraining order may be granted ... against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties"). See McArdle v. Comm. of Investigation, 41 A.D. 2d 401 (3d Dep't 1973) ("As we have held

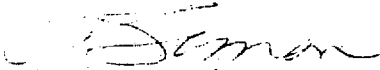
several times, stays which restrain State officials from the performance of their official duties may not be granted ex parte." The Uniform Rules § 202.7(f), also require notification of the time, date and place, to the party against whom the temporary restraining order is sought.

Furthermore, this is the second time this petitioner attempted to restrain the State ex parte. In a related proceeding with this court last year, petitioner sought, unsuccessfully, to restrain the State without notice. See attached correspondence to Hon. Ryan, and Decision and Order.

This matter involves an attempt by the petitioners to bypass the APA's regulatory jurisdiction, and to moot the Agency's determination of March 25, 2008. Unfortunately, the Court's ex parte TRO facilitates petitioner's goal. Instead of barring APA's lawful exercise of statutory jurisdiction, CPLR § 6313(a) actually warrants the Court's direction to petitioner to maintain the status quo - ceasing all construction activities - until the dispute can be addressed by the Court.

I will be contacting the Court to arrange a conference on this matter at the Court's earliest convenience.

Respectfully submitted,

  
Loretta Simon  
Assistant Attorney General  
(518) 402-2724

cc: John Privitera (By facsimile)  
Paul Van Cott (By facsimile)

At Chambers of the Supreme Court of the State of New York, held in and for the County of Essex at the Courthouse in Elizabethtown, New York the 9<sup>th</sup> day of April, 2008.

**PRESENT: HON. RICHARD B. MEYER, J.S.C. (Acting)**

**STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF ESSEX**

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**LEWIS FAMILY FARM, INC.**

*Petitioner,*

**AMENDED  
ORDER TO SHOW CAUSE**

*- against -*

**ADIRONDACK PARK AGENCY,**

Index No. 315-08  
RJI No. 15-1-2008-0109

*Respondent.*

---

Upon reading and filing the affidavits of Barbara A. Lewis and John J. Privitera, sworn to April 7, 2008, and the exhibits and papers thereto annexed, and on motion of McNamee, Lochner, Titus & Williams, P.C., attorneys for Petitions, it is hereby

**ORDERED** that the Respondent or its attorneys show cause before this Court at a motion term thereof to be held in and for the County of Essex at the Courthouse in Elizabethtown, New York on the 11<sup>th</sup> day of April, 2008 at 1:30 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why an order should not be granted staying the Respondent's Enforcement Committee decision of March 25, 2008, which is being challenged in the Article 78 proceeding herein, until the determination

of the determination of the appeal from said decision; and it is further

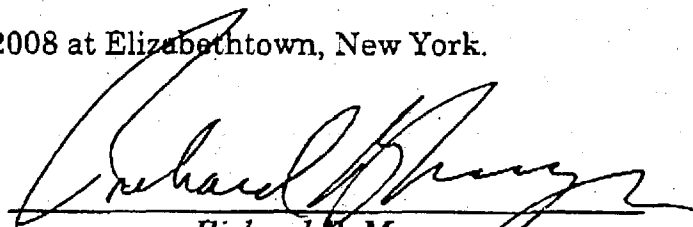
**ORDERED** that answering papers, if any, are required to be filed with the Clerk of this Court, with proof of due service of a copy thereof upon Petitioner's counsel, on or before 10:00 a.m. on April 11, 2008; and it is further

**ORDERED** that the order to show cause issued by this Court on April 8, 2008 be and the same hereby is replaced by this amended order, and any stay or temporary restraining order therein is vacated *ab initio*, and it is further

**ORDERED** that service of a copy of this order via facsimile transmission to the office of the attorney for Petitioner and to the New York State Attorney General on or before April 10, 2008 shall be deemed good and sufficient service hereof.

Order signed this 9<sup>th</sup> day of April, 2008 at Elizabethtown, New York.

**ENTER**



Richard B. Meyer  
Acting Supreme Court Justice

**EXHIBIT G**

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
03/28/08	JJP	1.25	300	\$375.00	Review stay issues, telephone call with APA regarding stay, telephone call with Sandy Lewis regarding status of dispute and filing of petition.
03/28/08	JFL	0.25	150	\$37.50	Meeting with John J. Privitera regarding Article 78 and motion for stay.
04/02/08	JJP	1.50	300	\$450.00	Series of telephone conferences with Sandy Lewis regarding strategy and review petition and stay issues.
04/03/08	JFL	5.75	150	\$862.50	Legal research regarding stay under CPLR 7805; extended attention to order to show cause and memorandum of law in support, meeting with John J. Privitera regarding same.
04/04/08	JFL	6.00	150	\$900.00	Continued legal research on stays in Art. 78 proceedings; finished drafts of Petition, Memorandum in Support, Affidavits of John J. Privitera and Barbara Lewis, meeting with John J. Privitera.
04/07/08	JJP	7.25	300	\$2,175.00	Conference with the Farm Bureau, draft Petition and Motion for Stay
04/07/08	JFL	7.75	150	\$1,162.50	Extended attention to Article 78 Petition, affidavits and Memorandum in Support of Stay; teleconference with Essex County Clerk and Supreme Court Clerk
04/08/08	JJP	2.50	300	\$750.00	Telephone call with Sandy Lewis, correspondence with the Farm Bureau, telephone calls with opposing counsel and review correspondence and papers relating to motion for stay

Illegal ex parte stay, C.P.L.R. § 6313(a)

Involves non legal expenses for publicity, website, meeting with allies etc

Billing attorney rate for paraprofessional tasks

Involves Lewis Farm II (Essex County Index No. 498-074)

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
04/08/08	JFL	11.25	150	\$1,687.50	Travel to and from Elizabethtown, Plattsburgh, and Ray Brook; presented Order to Show Cause to Judge Meyer; served Order and Petition upon Attorney General and APA
04/09/08	JJP	3.00	300	\$900.00	Telephone calls with opposing counsel; draft letter to the Judge; revise order to show cause; review status and strategy with Sandy Lewis and correspondence relating thereto
04/11/08	JJP	9.50	300	\$2,850.00	Prepare for travel to and attend oral argument in front of Judge Meyer in Elizabethtown on Motion for Stay; follow up telephone calls with Sandy Lewis
04/15/08	JFL	3.00	150	\$450.00	Served Loretta Simon, Esq with motions; teleconference with Essex Clerk regarding Notice of Appeal in previous action; prepared Appellate papers regarding automatic stay.
04/15/08	JJP	2.25	300	\$675.00	Series of conferences with Sandy Lewis regarding status and strategy; review Appellate strategy and prepare for possible appeal; discuss issues with journalists
04/15/08	JJP	2.00	300	\$600.00	Series of conference with Sandy Lewis regarding Motion for a Stay and case status; respond to press inquiries; draft portions of Stay document regarding motion to renew and reargue.
04/17/08	JJP	1.25	300	\$375.00	Series of conferences regarding press inquiries; conference with Farm Bureau and various attorneys regarding hiring for an amicus group; outline strategy for motion to renew stay

~~Illegal ex parte Stay, C.P.L.R. § 6313(a)~~

~~Involves non-legal expenses for publicity, website, meeting with allies, etc.~~

~~Billing attorney rate for paraprofessional tasks.~~

~~Involves Lewis Family (Essex County Index No. 498-07)~~

Involves APA enforcement action.



## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
04/21/08	JJP	3.00	300	\$900.00	Series of telephone conferences with the Press; telephone conference with the Court regarding scheduling, outline and file new motion to renew stay.
04/22/08	JFL	8.25	150	\$1,237.50	Extended attention to APA's cross-motion to transfer, drafted memorandum of law in opposition and John J. Privitera Affirmation, teleconferences with Essex County Clerk and client, reviewed APA's motion papers opposing motion to reargue the stay; conferences with John J. Privitera
04/24/08	JFL	0.25	150	\$37.50	Attention to press coverage, conference regarding strategy of appellate motion to extend time to perfect appeal at Justice Ryan's decision
04/28/08	JJP	8.00	300	\$2,400.00	Prepare motion for stay, prepare for argument and appear before Judge Leslie Stein regarding efforts to extend stay; follow up paperwork and revisions of order to show cause; telephone conference with Farm Bureau regarding amicus brief and follow up calls with Sandy Lewis regarding status.
04/29/08	JJP	2.50	300	\$750.00	Attention to finalization of papers for third department extension, review stay order and issues with Sandy Lewis
04/29/08	JFL	4.25	150	\$637.50	Attention to filing and service of Appellate Motion for Stay; conference with John. J. Privitera; draft proposed order on Motion for Consolidation and correspondence to Judge Meyer; e-mails with client

Illegal ex parte stay, C.P.L.R. § 63.13(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County, Index No. 498-07)

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
04/30/08	JJP	0.50	300	\$150.00	Attention to septic system issues and compliance with Court Order for dormitory building; telephone call with Sandy Lewis
05/05/08	JJP	2.00	300	\$600.00	Draft letter to Attorney General's office regarding septic, revise letter to be signed by Ferris; attention to filings on escrow, series of telephone conferences with Court Clerk, County Treasurer, Sandy Lewis and Barbara Lewis regarding status and review septic drawing.
05/06/08	JLF	1.00	150	\$525.00	Attention to Motion to extend time to perfect appeal of Justice Ryan's Decision; drafted Notice of Motion and Affidavit in Support
05/07/08	JJP	2.75	300	\$825.00	Rewrite and edit motion to enlarge time and reply papers; extended correspondence regarding amicus brief; research and write 308 letter and telephone call with Sandy Lewis regarding same
05/08/08	JJP	2.25	300	\$675.00	Collateral estoppel research, attention to APA's affidavit regarding septic; draft letter and telephone calls with Sandy Lewis regarding follow up letter from Buckley regarding septic system
05/06/08	JFL	5.50	150	\$825.00	Extended attention to finalizing and filing motion to extend time to appeal and reply affidavit in motion for stay; teleconference and e-mails with client, conference with John J. Privitera regarding Article 78 brief strategy; attention to Agency's sur-reply affidavit.
05/09/08	JFL	3.25	150	\$487.50	Attention to Affirmation in response to Shawn Lalonde's affidavit; drafted service letter to Attorney Simon; conferences with John J. Privitera; e-mail correspondence; filed and served response.

Illegal ex parte stay, C.P.L.R. § 6313(a)

Includes non-legal expenses for publicity website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
05/13/08	JFL	4.50	150	\$675.00	Attention to service issues and briefing schedule for enforcement action and fax 78 proceeding; teleconference with and letters to Loretta Simon, Esq. conference with John J. Privitera regarding scheduling, legal research in preparation of Motion to Dismiss
05/14/08	JJP	0.75	300	\$225.00	Conference with Cynthia Feather's regarding amicus briefs for us and telephone call with Sandy Lewis regarding same.
05/15/08	JJP	2.50	300	\$750.00	Attention to Attorney General's cross motion regarding Ryan decision and timing of appeal; telephone calls with Sandy Lewis regarding status and strategy
05/15/08	JFL	2.25	150	\$337.50	Attention to Amended Complaint and Agency's cross motion in Appellate Division; conference with John J. Privitera and began drafting opposition affidavit.
05/16/08	JJP	2.00	300	\$600.00	Attention to Attorney General's cross motion; telephone calls with Sandy Lewis study new approach to Ryan's decision and outline brief.
05/16/08	JFL	5.75	150	\$862.50	Attention to Affidavit in opposition to cross motion; conference with John J. Privitera; filed motion papers with Appellate Division, legal research regarding collateral estoppel.
05/19/08	JJP	1.00	300	\$300.00	Telephone calls with Sandy Lewis and Barbara Lewis and research scope of defenses regarding civil case

~~Illegal ex parte stay, C.P.L.R. § 63.13(a)~~

~~Involves non-legal expenses for publicity, website, meeting with allies etc.~~

~~Billing attorney rate for paraprofessional tasks.~~

~~Involves Lewis Family (Essex County Index No. 498-07)~~

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
05/20/08	JFL	3.75	150	\$562.50	Reviewed legal research regarding collateral estoppel began drafting Memo of Law in Support of Petition and Motion to Dismiss, attention to Notice of Entry of Third Department's Decision on the Stay.
05/22/08	JFL	2.25	150	\$337.50	Attention to Memorandum of Law in Support of Article 78 Petition and Motion to Dismiss
05/23/08	JFL	4.00	150	\$600.00	Conferences with John J. Privitera; extended attention to memorandum of law in support of Article 78 proceeding and motion to dismiss.
05/26/08	JFL	1.00	150	\$150.00	Attention to memorandum of law in support of petition and motion to dismiss
05/27/08	JJP	1.75	300	\$525.00	Review brief points, outline and write portions thereof; further research regarding due process claims, <del>correspondence regarding Adirondack Local Government Review Board, telephone calls with Sandy Lewis regarding same.</del>
05/28/08	JJP	2.00	300	\$600.00	<del>Series of conferences with Sandy Lewis regarding Adirondack Local Government Review Board; draft statement for same;</del> work on brief and housing history issues; write portions of brief
05/28/08	JFL	7.90	150	\$1,185.00	Extended attention to memorandum of law in support of Article 78 petition and motion to dismiss legal research regarding individual corporate liability and substantial evidence.

~~Illegal ex parte stay, C.P.L.R. § 6313(a)~~

~~Involves non-legal expenses for publicity, website, meeting with allies, etc.~~

~~Billing attorney rate for paraprofessional tasks.~~

~~Involves Lewis Farm I (Essex County, Index No. 498-07)~~

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
05/29/08	JJP	2.50	300	\$750.00	Conferences with Sandy Lewis regarding Adirondack Local Government Review Board. Amicus brief and other issues. Study Amicus brief and attention to rewrite of portions of Lewis brief
05/29/08	JFL	2.50	150	\$375.00	Teleconference with Court Clerk and Loretta Simon, Esq. regarding return date and briefing schedule. attention to Farm Bureau's amicus brief, conference with John J. Privitera
06/02/08	JJP	5.00	300	\$1,500.00	Drafting and review common issues and themes of briefs with Cynthia Feathers and Sandy Lewis
06/02/08	JFL	9.50	150	\$1,425.00	Extended attention to finalizing and drafting Memorandum of Law in Support of Petition and Motion to Dismiss, Affirmation and Notice of Motion, teleconferences with client and Judge Meyer's chambers; conferences with John J. Privitera re: strategy
06/03/08	JFL	7.50	150	\$1,125.00	Extended attention to finalizing Memorandum of Law; conference call with John J. Privitera and client; conferences with John J. Privitera, served and filed motion with Attorney General, Judge Meyer and Cynthia Feathers, Esq.
06/04/08	JFL	0.75	150	\$112.50	Teleconferences with client, attention to file management
06/05/08	JFL	0.50	150	\$75.00	Teleconference with client, attention to file.
06/13/08	JJP	1.50	300	\$450.00	Attention to assistance regarding website development, review correspondence and court orders regarding amicus and scheduling, review status with Sandy Lewis

Illegal ex parte stay, C.P.L.R. § 63.13(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County, Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
06/17/08	JFL	8.75	150	\$1,312.50	Extend attention to reply memorandum of law, conferences with John J. Privitera, <del>telephone conferences with client and Cynthia Feathers, Esq.</del>
06/18/08	JJP	4.75	300	\$1,425.00	Finalize reply brief; review file, organize case law and other materials in preparation for oral argument and travel to Elizabethtown.
06/15/08	JFL	6.75	150	\$1,012.50	Extended attention to finalizing and filing Reply Memorandum and Affirmation; <del>served papers on Loretta Simon and Cynthia Feathers</del> , conferences with John J. Privitera and client; prepared materials for argument
06/19/08	JJP	11.00	300	\$3,300.00	Prepare for and participate in oral argument of Article 78 petition and motion to dismiss civil matter; travel.
06/19/08	JFL	10.25	150	\$1,537.50	Prepared for, traveled to, and attended hearing in Essex County for argument on Article 78.
06/20/08	JFL	1.00	150	\$150.00	Telephone conference with client; <del>attention to press coverage</del> , attention to file
06/30/08	JJP	0.75	300	\$225.00	Telephone conference with Sandy Lewis; <del>telephone conference with Fred Monroe regarding action plan</del>
07/02/08	JJP	5.00	300	\$1,500.00	Study opinion regarding partial disposition; <del>conference with Faith Bureau</del> , telephone conference with Court regarding same, telephone call with Sandy Lewis and outline strategy and balance of briefing schedule and proceedings with Jacob Lamme.

~~Illegal ex parte stay, C.P.L.R. § 6313(a)~~

~~Includes non-billable expenses for auditing, websites, meeting with allies etc.~~

~~Billing attorney rate for paraprofessional tasks.~~

~~Involves Lewis Famil (Essex County Index No. 498-07).~~

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
07/03/08	JFL	5.50	150	\$825.00	Attention to Motion to Appellate Division to extend appeal time, served motion and notice of entry
07/08/08	JFL	1.80	150	\$270.00	Conference with Loretta Simon re extension proposal, attention to file; e-mails to John J. Privitera and client, teleconferences with client; letter to Loretta Simon
07/11/08	JFL	4.25	150	\$637.50	Teleconferences with client; drafted Answer to Amended Summons and Complaint, teleconference with Cynthia Peathers, correspondence from Judge Meyer
07/14/08	JFL	2.75	150	\$412.50	Reviewed Agency's opposition to Appellate Motion to Extend Time to Appeal; drafted, served and filed Reply Affidavit.
07/15/08	JFL	2.25	150	\$337.50	Attention to Farm's Answer of Enforcement action, e-mail and teleconference with client.
07/23/08	JJP	2.25	300	\$675.00	Draft papers in support of summary judgment and attention to answer
07/23/08	JFL	4.75	150	\$712.50	Attention to drafting summary judgment memorandum of law; conference with John J. Privitera; teleconference with client.
07/24/08	JJP	1.50	300	\$450.00	Attention to summary judgment brief
07/24/08	JFL	3.75	150	\$562.50	Attention to summary judgment papers; conference with John J. Privitera regarding strategy.

Illegal ex parte stay, C.P.L.R. § 6813(a)

Involves non-legal expenses for publicity, website, dealing with aliases etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Family (Essex County, Index No. 498-07)

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
07/25/08	JJP	2.00	300	\$600.00	Series of telephone calls with Sandy Lewis; draft brief in support of motion for summary judgment.
07/25/08	JFL	3.25	150	\$487.50	Attention to Third Department's Decision regarding extension, drafted and served Notice of Entry on Loretta Simon Esq; attention to summary judgment motion papers
07/28/08	JJP	1.25	300	\$375.00	Revise answer in counterclaim/enforcement case, outline portion of brief.
07/28/08	JFL	2.75	150	\$412.50	Attention to Summary Judgment papers; completed first draft of Memorandum of Law.
07/28/08	JFL	0.75	150	\$112.50	Teleconference with client attention to file
07/28/08	JJP	1.75	300	\$525.00	Draft portions of the Answer and Brief in support of summary judgment
07/29/08	JFL	1.25	150	\$187.50	Attention to summary judgment motion papers; conference with John J. Privitera
07/30/08	JJP	5.00	300	\$1,500.00	Draft brief and revise answer.
07/30/08	JFL	7.25	150	\$1,087.50	Extended attention to motion for summary judgment papers, conferences with John J. Privitera; prepared record for exhibit, teleconference with client, drafted John J. Privitera Affidavit; finalized and served answer.

Illegal ex parte stay, C.P.L.R. § 6813(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Family (Essex County Index No. 498-07)

Involves APA enforcement action.



## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
07/31/08	JJP	4.75	300	\$1,425.00	Draft brief in support of summary judgment.
07/31/08	JFL	8.75	150	\$1,312.50	Extended and extensive attention to summary judgment papers, teleconferences with client, conferences with John J. Privitera; reviewed APA's Papers Opposing Article 78 Petition.
08/01/08	JFL	7.75	150	\$1,162.50	Extended attention to drafting, revising and finalizing summary judgment papers; conferences with John J. Privitera, teleconferences with client; served motion on Loretta Simon and Cynthia Feathers
08/08/08	JFL	1.25	150	\$187.50	Finalized, filed, and served response to Agency's Motion for permission to appeal, teleconference with client.
08/11/08	JFL	1.00	150	\$150.00	Attention to Agency's cross-motion for summary judgment, e-mail to Loretta Simon, Esq; teleconference with client.
08/12/08	JFL	7.75	150	\$1,162.50	Conference call with client and John J. Privitera extended attention to Memorandum of Law In Reply to Summary Judgment Motion and Opposing the Agency's Motion.
08/13/08	JJP	3.75	300	\$1,125.00	Draft document in reply and conferences with Sandy Lewis and Cynthia Feathers regarding same.
08/13/08	JFL	4.25	150	\$637.50	Conference with John J. Privitera regarding strategy on opposing Agency's summary judgment motion attention to drafting Reply Memorandum of Law and Affidavits

Illegal ex parte stay, C.P.L.R. § 6313(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County, Index No. 498-07)

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
08/14/08	JJP	3.00	300	\$900.00	Draft reply brief.
08/15/08	JFL	3.50	150	\$525.00	Attention to finalizing summary judgment opposition and reply papers, conferences with John J. Privitera, Esq., teleconferences with client
08/18/08	JFL	1.50	150	\$225.00	Conference calls with John J. Privitera, Esq. and client, drafted demand letter to Loretta Simon.
09/03/08	JJP	1.50	300	\$450.00	Draft document regarding Ryan appeal and outline Appellate points regarding same.
09/03/08	JFL	2.75	150	\$412.50	Teleconferences and e-mails with client, drafted motion to Appellate Division to extend appeal time of Judge Ryan's Decision
09/04/08	JFL	3.10	150	\$465.00	Teleconferences with client, attention to record from 498-07 case
09/05/08	JFL	0.75	150	\$112.50	E-mails, voicemails and teleconferences with client re website content
09/11/08	JFL	1.00	150	\$150.00	Attention to preparation of Record on Appeal for briefing of appeal re Judge Ryan
09/12/08	JFL	3.00	150	\$450.00	Compiled record on appeal for Judge Ryan's decision; drafted stipulations and notices for transcripts and record and forwarded them to Loretta Simon.

Illegal *ex parte* stay, C.P.L.R. § 6313(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County, Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
09/15/08	JJP	1.50	300	\$450.00	Telephone call with Sandy Lewis regarding status of appeals and litigation, research and review Ryan appeal issues and AG papers and discuss with Sandy Lewis.
09/16/08	JJP	0.25	300	\$75.00	Telephone call with Sandy and Barbara Lewis regarding developments on Ryan appeal
09/16/08	JFL	1.00	150	\$150.00	Teleconferences with client, e-mail new document for website, attention to issues re appeal of Judge Ryan, conference with John J. Privitera
09/18/08	JFL	0.25	150	\$37.50	Teleconference with Loretta Simon re record on appeal and transcript
09/23/08	JFL	4.50	150	\$675.00	Extended attention to finalizing Record on Appeal for the appeal of Judge Ryan's decision
09/25/08	JFL	0.30	150	\$45.00	E-mail correspondence with Loretta Simon re Record on Appeal, teleconference with John J. Privitera re same
09/29/08	JFL	1.25	150	\$187.50	Teleconference with client, served Notice of Entry; teleconference with Loretta Simon; attention to stipulation re record on appeal and transcript.
10/16/08	JFL	3.25	150	\$487.50	Attention to Record on Appeal of Judge Ryan's Order, teleconferences with client
10/29/08	JFL	0.25	150	\$37.50	Teleconference with Loretta Simon re Appellate Division motion

Illegal *ex parte* stay, C.P.L.R. § 6313(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
11/14/08	JJP	0.75	300	\$225.00	Telephone call regarding Ryan decision on appeal in the Third Department, timing and papers in support of extension, review status and strategy with Sandy Lewis.
11/17/08	JJP	0.50	300	\$150.00	Outline response in Third Department regarding extension of time of Ryan appeal
11/17/08	JFL	2.00	150	\$300.00	Attention to APA's Response to Motion for Extension, drafted and filed Reply Affidavit with Appellate Division.
11/19/08	JJP	5.25	300	\$1,575.00	Study Judge Meyer decision and review with Sandy Lewis, Barbara Lewis, Oyatina Peathers and Jacob Lammie.
11/19/08	JFL	7.25	150	\$1,087.50	Extended attention to studying Judge Meyer's decision, drafted and served Notice of Entry, teleconferences with client and county treasurer; drafted proposed judgment, researched various appellate issues.
11/20/08	JJP	4.50	300	\$1,350.00	Series of press interviews; research regarding stays/right to escrow; telephone calls with Sandy Lewis regarding status and strategy; conference with County Attorney; correspondence with Judge Meyer and County Attorney and research and brief the stay issues
12/01/08	JFL	1.50	150	\$225.00	Attention to Appellate Division's decision re extension for Judge Ryan appeal, drafting and served Notice of Entry; teleconference with client.

Illegal ex parte stay, C.P.L.R. § 63.13(a)

Involves non-legal expenses for publicity website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Family II (Essex County Index No. 498-07)

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
12/23/08	JFL	4.25	150	\$637.50	Attention to drafting motion consolidation papers; finalized and served appellate motion papers
12/29/08	JJP	0.75	300	\$225.00	Conference with Sandy Lewis and Farm Bureau regarding Appellate strategy
12/30/08	JJP	1.25	300	\$375.00	Series of conferences with Sandy Lewis regarding Appellate timing and submissions, conference with Sandy Lewis and Farm Bureau representatives regarding support
01/05/09	JFL	5.75	150	\$862.50	Teleconferences with client (extended conference call); attention to APA's opposition to consolidation motion, drafted Reply Affidavit and served and filed same with Third Department
01/06/09	JJP	0.75	300	\$225.00	Telephone call with Sandy Lewis regarding Farm Bureau and alliances and Amicus Brief
01/16/09	JFL	0.50	150	\$75.00	Attention to Appellate Division's Order, coordinate reproduction of appellate record in Action No. 1 to provide to Attorney General
01/20/09	JJP	1.00	300	\$300.00	Correspondence with Cynthia Reathers regarding Farm Bureau executive strategy, conference with Sandy Lewis regarding executive strategy and appellate strategy
01/21/09	JJP	0.50	300	\$150.00	Conference with Sandy Lewis, conference with Cynthia Reathers regarding Appellate strategy

Illegal ex parte stay, C.P.L.R. § 6313(a)

Involves non legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm II (Essex County Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
01/27/09	JJP	0.50	300	\$150.00	Telephone conference with Farm Bureau regarding appellate strategy.
02/17/09	JFL	4.25	150	\$637.50	Attention to drafting, revising and finalizing papers in opposition to injunction, filed and served the same
02/19/09	JFL	2.75	150	\$412.50	Teleconferences with client, attention to reviewing Agency's proposed Record on Appeal, reviewed Farm Bureau's Amicus Motion, drafted letter to Loretta Simon, Esq
02/27/09	JFL	0.50	175	\$87.50	E-mail to client re AG's response to amicus motion; meeting with John J. Privitera re appellate strategy
03/09/09	JJP	0.50	300	\$150.00	Telephone conferences with Sandy Lewis regarding status, strategy amicus brief and overall argument.
03/09/09	JFL	0.25	175	\$43.75	E-mails and teleconferences re Court's ruling on amicus motion
03/10/09	JFL	3.00	175	\$525.00	E-mail and teleconferences with client re APA meeting status and Court's ruling on Amicus Motion; attention to issues re Record on Appeal, travel to Camelot to retrieve Record
03/19/09	JFL	1.00	175	\$175.00	Telephone conference with Cynthia Feathers, Esq. re: Appellate Brief strategy; Attention to issues re brief and appeal.
03/23/09	JFL	5.75	175	\$1,006.25	Telephone conferences with client & Cynthia Feathers, Esq.; extended attention to drafting and revising Respondents' Appellate Brief.

Illegal ex parte stay, C.P.L.R. § 6313(a)

Involves non-legal expenses for publicity, website, meeting with allies etc.

Billing attorney rate for paraprofessional tasks.

Involves Lewis Farm I (Essex County, Index No. 498-07).

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
03/26/09	JFL	4.75	175	\$831.25	Teleconference with client <del>email with Cynthia Feathers, Esq.</del> , attention to drafting and revising Respondents' Brief on Appeal
03/30/09	JFL	7.00	175	\$1,225.00	Extended attention to revising Respondents' Brief on Appeal, <del>teleconferences with John J. Privitera, Cynthia Feathers</del> and client
04/01/09	JFL	3.50	175	\$612.50	Teleconferences with client, finalized and <del>served respondents'</del> Brief on Appeal
04/06/08	JFL	1.00	175	\$175.00	<del>Reviewed Farm Bureau's Amicus Brief</del> ; attention to issues on appeal, teleconference with client
04/16/09	JFL	0.75	175	\$131.25	<del>E-mails to client and Farm Bureau; teleconferences with client and Cynthia Feathers.</del>
04/17/09	JJP	0.75	300	\$225.00	<del>Study Amicus Brief from Farm Bureau and markup same.</del>
04/24/09	JFL	0.25	175	\$43.75	Attention to caselaw under the EAJA.
05/08/09	JFL	4.75	175	\$831.25	Attention to reviewing, revising and finalizing Reply Brief. <del>Filing and service of same</del> , teleconferences and e-mail with client
			<b>TOTAL FEES:</b>	<b><u>\$86,477.50</u></b>	

~~Illegal ex parte stay, C.P.L.R. § 6313(a)~~

~~Involves multiple expenses for publicity, website, meeting with allies etc.~~

~~Billing attorney rate for paraprofessional tasks.~~

~~Involves Lewis Farm I (Essex County Index No. 498-07).~~

Involves APA enforcement action.

## Fees and Expenses Disputed by the State of New York

DATE	TIMEKEEPER	HOURS	BILLABLE RATE	FEES BILLED	DESCRIPTION
<b><u>Expenses:</u></b>					
04/09/08				\$199.24	Jacob F. Lamme; Travel - mileage & meal
04/11/08				\$150.00	Miscellaneous - Storage Retrieval - emergency basis
06/18/08				\$80.00	DVD duplication
06/19/08				\$126.25	James Garvin; Travel
10/20/08				\$387.22	Camelot Legal Copy; Copy Charges
03/12/09				\$404.24	Camelot Legal Copy; Copy Charges
06/18/09				\$5.50	Sanjeev Devabhakthuni; Travel on 6/10
Expense Total				<u>\$1,352.45</u>	
<b>Grand Total</b>				<b>\$87,829.95</b>	

**Illegal ex parte stay, C.P.L.R. § 6313(a)**

**Involves non-legal expenses for publicity, website, meeting with elites etc.**

**Billing attorney rate for paraprofessional tasks.**

**Involves Lewis Family (Essex County Index No. 498-07)**

**Involves APA enforcement action.**



**EXHIBIT H**

**THE 2004 DESKTOP REFERENCE ON THE  
ECONOMICS OF LAW PRACTICE  
IN NEW YORK STATE**

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Benchmarks and Referents for Law Practice Management

Survey Conducted by:  
Spectrum Associates Market Research  
Farmington, CT

### C. Methodology

As a preliminary step in the research process, NYSBA obtained a list of 21,471 law firms operating in the State of New York and provided the list to Spectrum Associates. Figure 1 displays the break out of these law firms by region (i.e., New York City, Westchester County, Long Island, Albany County, Buffalo, Rochester, Syracuse, and Other<sup>1</sup>), and size of law firm (i.e., solo, 2 – 9, and 10+).

**Figure 1**  
**Number of New York Law Firms**  
**By Size of Firm and Region**

	Solo	2 - 9	10+	Total
	Count	Count	Count	Count
Buffalo	713	250	31	994
Rochester	466	123	20	609
Syracuse	301	132	15	448
Albany County	354	153	29	536
Westchester County	1,313	214	11	1,538
New York City	9,015	1,221	222	10,458
Long Island	3,371	430	29	3,830
Other	2,404	630	24	3,058
Total	17,937	3,153	381	21,471

As displayed in Figure 1, of the 21,471 law firms in the State of New York:

- ◆ Over four-fifths (83.5%) were solo practitioners, 14.7% have 2 – 9 attorneys, and only 1.8% had 10+ attorneys.
- ◆ Almost one-half of the law firms were located in New York City (48.7%), and another one-fourth (25.0%) was downstate in either Long Island (17.8%) or Westchester County (7.2%).

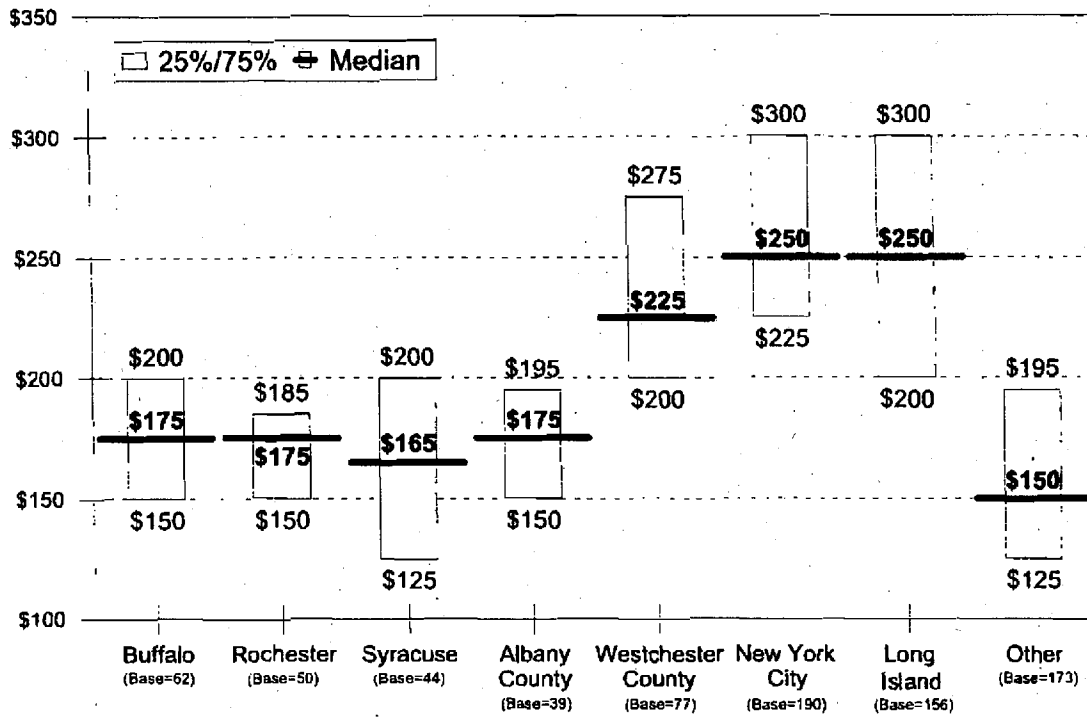
Using the list of law firms provided, Spectrum Associates calculated the number of completed surveys desired to achieve statistically projectable data for each of the eight geographic regions and determined how many surveys should be conducted within each law firm size category to obtain: (a) a proportionate mix across size of firm for each region; and (b) a sufficient number of law firms with 10+ attorneys to have statistically projectable findings for these larger firms (aggregate).

Efforts taken to gather the desired surveys included the following:

- ◆ The NYSBA mailed out solicitations to managing partners and solo practitioners for all 21,471 law firms across the state. The mailing included a cover letter describing the study and requesting participation, and a fax response for interested firms to inform NYSBA of their willingness to participate.

<sup>1</sup> "Other" is used to refer to all of New York State excluding the seven specific regions.

**Figure 9b**  
**Equity Partners' Billing Rates (By Region)**



**Figure 9c**  
**Detailed Analysis of Equity Partner Billing Rates**  
**(By Region)**

	Base	Percentile 25	Median	Percentile 75	Percentile 95	Mean
Buffalo	62	\$150	\$175	\$200	\$250	\$172
Rochester	50	\$150	\$175	\$185	\$225	\$173
Syracuse	44	\$125	\$165	\$200	\$250	\$165
Albany County	39	\$150	\$175	\$195	\$255	\$173
Westchester County	77	\$200	\$225	\$275	\$350	\$235
New York City	190	\$225	\$250	\$300	\$400	\$268
Long Island	156	\$200	\$250	\$300	\$350	\$248
Other	173	\$125	\$150	\$195	\$275	\$166
Total	791	\$175	\$240	\$295	\$375	\$236

**Figure 10b**  
**Detailed Analysis of Non-Partner Attorneys' Billing Rates by Experience**

		Base	Percentile 25	Median	Percentile 75	Percentile 95	Mean
<b>10 + Years Experience</b>	Buffalo	19	\$150	<b>\$163</b>	\$185	\$225	\$166
	Rochester	19	\$150	<b>\$180</b>	\$185	\$204	\$173
	Syracuse	15	\$175	<b>\$200</b>	\$240	\$275	\$206
	Albany County	12	\$175	<b>\$175</b>	\$225	\$270	\$189
	Westchester County	16	\$250	<b>\$250</b>	\$300	\$400	\$268
	New York City	63	\$250	<b>\$300</b>	\$350	\$395	\$292
	Long Island	57	\$250	<b>\$275</b>	\$325	\$350	\$272
	Other	49	\$150	<b>\$175</b>	\$225	\$300	\$188
	Total	250	\$175	<b>\$250</b>	\$300	\$375	\$244
<b>5 - 9 Years Experience</b>	Buffalo	19	\$125	<b>\$150</b>	\$150	\$175	\$141
	Rochester	13	\$140	<b>\$150</b>	\$185	\$190	\$158
	Syracuse	9	\$140	<b>\$150</b>	\$175	\$180	\$156
	Albany County	14	\$130	<b>\$150</b>	\$175	\$195	\$156
	Westchester County	7	\$200	<b>\$200</b>	\$225	\$300	\$225
	New York City	58	\$175	<b>\$250</b>	\$270	\$309	\$230
	Long Island	43	\$200	<b>\$225</b>	\$250	\$300	\$216
	Other	26	\$150	<b>\$175</b>	\$200	\$250	\$175
	Total	189	\$150	<b>\$200</b>	\$250	\$300	\$203
<b>1 - 4 Years Experience</b>	Buffalo	18	\$100	<b>\$115</b>	\$150	\$150	\$116
	Rochester	16	\$115	<b>\$150</b>	\$150	\$167	\$137
	Syracuse	11	\$115	<b>\$125</b>	\$150	\$162	\$131
	Albany County	15	\$120	<b>\$145</b>	\$150	\$175	\$137
	Westchester County	7	\$150	<b>\$175</b>	\$225	\$250	\$181
	New York City	54	\$160	<b>\$175</b>	\$200	\$250	\$184
	Long Island	47	\$168	<b>\$190</b>	\$230	\$250	\$193
	Other	33	\$110	<b>\$125</b>	\$150	\$180	\$134
	Total	201	\$125	<b>\$160</b>	\$200	\$250	\$164
<b>&lt; 1 Year Experience</b>	Buffalo	10	\$100	<b>\$125</b>	\$150	\$150	\$114
	Rochester	10	\$75	<b>\$100</b>	\$135	\$155	\$105
	Syracuse	5	\$85	<b>\$90</b>	\$125	\$150	\$102
	Albany County	8	\$75	<b>\$105</b>	\$125	\$175	\$112
	Westchester County	2	\$100	<b>\$125</b>	\$150	\$150	\$125
	New York City	22	\$125	<b>\$140</b>	\$170	\$200	\$144
	Long Island	22	\$135	<b>\$150</b>	\$200	\$250	\$163
	Other	14	\$75	<b>\$100</b>	\$130	\$150	\$108
	Total	93	\$100	<b>\$130</b>	\$150	\$200	\$131