

504626 and #504696

NEW YORK STATE SUPREME COURT APPELLATE DIVISION : THIRD DEPARTMENT

Matter of LEWIS FAMILY FARM, INC.,
Appellant.
-against-
ADIRONDACK PARK AGENCY,
Respondent.
(Case No. 1)

Matter of LEWIS FAMILY FARM, INC.,
Respondent,
-against-
ADIRONDACK PARK AGENCY,
Appellant.
(Case No. 2)

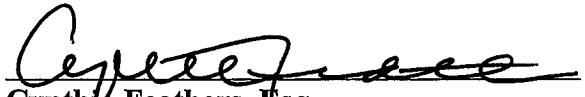
ADIRONDACK PARK AGENCY,
Appellant,
-against-
LEWIS FAMILY FARM, INC., et al.,
Respondents.
(Case No. 3)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmation of Cynthia Feathers, Esq., dated February 13, 2009, the undersigned will move this Court at a Term thereof to be held in the Justice Building on March 2, 2009 at 9:30 a.m. of that day or as soon thereafter as counsel can be heard for an order granting New York Farm Bureau, Inc. ("Farm Bureau") permission to (1) submit an amicus curiae brief, on the ground that the movant is an agricultural membership organization possessing vital information regarding the subject matter of this case and that it appeared in the proceedings below as amicus curiae, (2) for permission to orally argue before this Court, and (3) for such other and further relief as the Court deems just and proper. Please take further notice that the motion will be argued on the papers and that personal appearance in opposition is neither required nor permitted.

Date: February 13, 2009
Saratoga Springs, NY

Respectfully submitted,



Cynthia Feathers, Esq.

Of counsel to New York Farm Bureau, Inc.
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504626 and #504696

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION : THIRD DEPARTMENT

Matter of LEWIS FAMILY FARM, INC.,
Appellant.
-against-
ADIRONDACK PARK AGENCY,
Respondent.

(And Other Related Proceedings).

AFFIRMATION IN SUPPORT OF MOTION TO FILE AMICUS CURIAE BRIEF AND TO ORALLY ARGUE APPEAL

CYNTHIA FEATHERS, an attorney at law duly admitted to practice in the Courts of this State, swears and affirms under penalty of perjury that:

1. I am of counsel to New York Farm Bureau ("Farm Bureau"), a not-for-profit, voluntary, general farm organization, and I make this affirmation in support of its motion seeking permission to file an amicus curiae brief and to orally argue in this Court.

2. This appeal presents a matter of vital importance to Farm Bureau and its constituents: whether the state policy of supporting farming will be advanced by permitting farmers to build farm worker housing free of the intrusion by the Adirondack Park Agency that Supreme Court found to be irrational under the relevant statutory scheme.

3. As set for the more fully below, Farm Bureau has expertise that uniquely positions the organization to offer insights on the central salient question of whether farm worker housing is

an integral part of farm operations that stands beyond the regulatory reach of the Adirondack Park Agency.

4. Because of its extensive knowledge of farming in the Adirondack Park, Essex County Supreme Court granted Farm Bureau permission to file an amicus curiae brief in the proceedings below (Case No. 2, Index No. 315-08), as well as to participate in oral argument, at which that court asked Farm Bureau numerous questions that helped in providing a greater understanding of the role of farm worker housing and of what constitutes a rational interpretation of the subject statutory provisions.

5. Farm Bureau, which has a statewide membership of nearly 30,000 farmers in 52 counties, is dedicated to promoting, protecting, and representing the economic, social and educational interests of New York farmers and encouraging the development and preservation of agriculture within the state.

6. The organization also seeks to strengthen legislation recognizing the unique nature of the agricultural industry and to ensure adherence with state policies and laws regarding agriculture.

7. The instant dispute concerns farm worker housing on farm premises in a county-created, state-certified Agricultural District within the Adirondack Park in an area classified by the Adirondack Park Agency as a resource management area, where agriculture is a primary use.

8. At the heart of this appeal is Executive Law § 802 (8), a provision of the Adirondack Park Act ("Park Act") governing whether farm worker housing built on farm premises is an integral part of farm operations. As Supreme Court found, the only reasonable interpretation of the provision is that the subject farm worker housing is outside Adirondack Park Agency control.

9. The anomalous interpretation espoused by the agency dishonors the command in the State Constitution (Art. XIV, § 4) that agriculture must be promoted throughout the state, ignores salient provisions of the Agriculture and Markets Law regarding farm worker housing, and contravenes *Town of Lysander v. Hafner*, 96 NY2d 558, a seminal case in which Farm Bureau appeared as amicus curiae.

10. The agency's interpretation demonstrates ignorance about the integral role farm worker housing plays on farm premises, given the need for farmers to accommodate the long work day, address the shortage of nearby rental housing and available transportation in rural areas, and provide ease of access to farm buildings and operations.

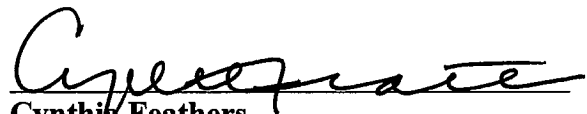
11. Farm Bureau can provide relevant information and analysis regarding the statutes at issue, the importance of farming in the Adirondack Park, and the potentially broad impact of the decision by this Court. In sum, movant can draw attention to factors which should be considered by this Court in its deliberations and might not otherwise be known to the Court.

12. Farm Bureau therefore respectfully seeks permission to submit an amicus curiae brief. In addition, movant respectfully requests an opportunity to participate in oral argument.

13. Movant respectfully requests that it be given three weeks after an order granting this motion to submit its brief.

WHEREFORE, on behalf of Farm Bureau, the undersigned respectfully requests that this motion for leave to file an amicus curiae brief and to orally argue be granted.

Dated: February 13, 2009


Cynthia Feathers
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