

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

LEWIS FAMILY FARM, INC.,

AFFIDAVIT

Petitioner,

ACTION NO. 1

-against-

ADIRONDACK PARK AGENCY,

Index No. 315-08

Respondent.

Hon. Richard B. Meyer

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ESSEX

ADIRONDACK PARK AGENCY,

Plaintiff,

ACTION NO. 2
COUNTERCLAIM

-against-

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

Index No.: 332-08

Hon. Richard B. Meyer

Defendants.

**AFFIDAVIT IN SUPPORT OF LEWIS FAMILY FARM'S MOTION
TO RECOVER FEES AND EXPENSES PURSUANT TO CPLR ARTICLE 86**

State of New York)
) ss.:
County of Clinton)

HOWARD AUBIN, being sworn, deposes and says:

1. I am a citizen of the State of New York. I reside at 2086 Route 9N, Ausable Forks, New York. I am self employed.

2. I am familiar with the facts, law and circumstances of this case. I have read the judicial decisions in this matter. I make this affidavit in support of the Application of the Lewis Family Farm, Inc. for attorney's fees and expenses.

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3. Over the course of nearly twenty years, as a resident of the Adirondack Park, I have come to learn and understand the Adirondack Park Agency Act set forth at Executive Law § 801 *et seq.* and the applicable regulations published at 6 NYCRR Part 570 *et seq.* I have also come to learn and understand the Wild, Scenic and Recreational Rivers Act set forth at Environmental Conservation Law § 15-2709 and the applicable Adirondack Park Agency regulations concerning the Rivers Act set forth at 6 NYCRR Part 577 *et seq.*

4. Because of my self-taught knowledge and experience over the past couple of decades concerning the statutory and regulatory authority of the Adirondack Park Agency, I have become a volunteer resource to the community and its members who are often confused, befuddled, stymied and harmed by the Agency's actions.

5. On dozens of occasions over these past two decades, I have provided assistance and guidance to landowners in dealing with the Adirondack Park Agency and on many occasions I have been successful through this guidance in preventing the Adirondack Park Agency from improperly exercising jurisdiction or wrongly imposing arduous conditions upon land use and development and other activities inside the Park.

6. On many, many occasions, I have endeavored to secure counsel for distraught landowners who have legitimate complaints against the Adirondack Park Agency and I am regularly and consistently met with failure in this regard, as lawyers in the North Country decline to take on contested work against the Agency. There is a general fear among the Bar in the North Country that participation in a dispute against the Agency will harm their practices.

7. I know that the Adirondack Park Agency has often pressed beyond the limits of its legitimate statutory jurisdiction and has often imposed unreasonable conditions in ultimately permitting new land use and development.

8. Once, in the early 1990's, I expressed concern about the Agency's deliberate "mission creep" and concerted, deliberate efforts to push the envelope of their authority beyond legitimate jurisdictional regulation. I expressed this concern directly to Mr. Peter S. Paine, Jr., then a member of the Board of the Adirondack Park Agency, in a face-to-face conversation. Mr. Paine expressed full awareness of the Agency's activities in this regard and expressed extreme confidence that no one could ever afford to litigate against the Adirondack Park Agency on a significant matter because the Agency's counsel was free, in the Attorney General's Office, and no landowner could ever afford counsel to go toe-to-toe against the combined forces of the Agency and the Attorney General's Office. I trust that the Agency has often relied upon this imbalance of power.

9. For these reasons, it is certainly reasonable for this Court to rebalance to some degree the resources available to landowners in the Park by granting the pending application for fees. Given the culture of intimidation fostered by the Adirondack Park Agency, it was certainly reasonable for the Lewis Family Farm to engage the services of John Privitera and the McNamee Firm in Albany to litigate against the Agency.


Howard Aubitz

Sworn to before me this 21st day of
September 2009.


Notary Public

JANICE A. BROW
Notary Public, State of New York
Qualified in Essex County
My Commission Expires 12/30/11

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