

I/M/O RONALD BINAGHI,
STOKES FARM

STATE OF NEW JERSEY
OAL DKT. NO.: ADC 9219-05
SADC DKT. NO.: 0243-03 &
OAL DKT. NO.: ADC 3393-07
SADC DKT. NO.: 0244-03

FINAL DECISION

These matters arise from a dispute between James and Wilda LaGrossa ("LaGrossas"), who reside at [redacted] in Old Tappan, NJ, and Ronald Binaghi, Jr., the owner/operator of Stokes Farm located at [redacted] ("Stokes Farm" or "Binaghi"). The LaGrossas' property and Stokes Farm are immediately adjacent to each other.

PROCEDURAL BACKGROUND

In March 2005 Stokes Farm requested a site specific agricultural management practice (SSAMP) recommendation from the Bergen County Agriculture Development Board (BCADB or board) regarding the ventilation of pesticides from greenhouses on the farm. Stokes Farm also sought the protection of the Right to Farm Act with respect to the alleged refusal of the Borough of Old Tappan to issue a building permit for the construction of the greenhouses.

In April 2005 Alan S. Ashkinaze, Esq., attorney for the LaGrossas, filed a grievance on their behalf with the BCADB complaining that the ventilation of pesticides from the Stokes Farm greenhouses was causing adverse health effects to his clients. Mr. Ashkinaze filed a second complaint with

the BCADB on the LaGrossas' behalf in December 2005 essentially restating the April 2005 grievance.¹

Stokes Farm's SSAMP request and the LaGrossas' nuisance complaints were forwarded by the BCADB to the State Agriculture Development Committee (SADC) in April and December 2005, respectively, because the board concluded it was incapable of handling certain legal defenses it expected Mr. Binaghi to assert, and because Mr. Binaghi was a member of the BCADB.

The SADC transmitted both matters to the Office of Administrative Law (OAL) pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.²

In April 2006 Mr. Ashkinaze notified the OAL that the SSAMP case (Docket No. ADC 9219-05) had been settled as a result of a March 21, 2006 settlement conference with Administrative Law Judge (ALJ) Elinor Reiner. Mr. Ashkinaze further advised that he had drafted a stipulation of settlement for review and approval by Alexander H. Carver, III, Esq., attorney for Stokes Farm. The parties were unable to finalize the terms of the settlement agreement,

¹ In February 2006 the LaGrossas' attorney filed an ethics complaint against Mr. Binaghi with the Local Finance Board, a division of the Department of Community Affairs.

² The SADC transmitted the BCADB's referral of the Stokes Farm SSAMP request to the OAL in July 2005 (Docket No. ADC 9219-05); due to an oversight by the SADC the BCADB referral of the LaGrossas' December 2005 nuisance complaint was not transmitted to the OAL until February 2007 (Docket No. ADC 3393-07). The Stokes-LaGrossa dispute had been referred to mediation pursuant to the SADC's agricultural mediation program in November 2005. A mediation session was held in Hackensack on December 12, 2005, but no agreement was reached by the parties.

and the SSAMP matter was scheduled for an OAL hearing in December 2006. However, due to the delayed transmittal of the LaGrossas' nuisance complaint (Docket No. ADC 3393-07) and processing by OAL, both cases were rescheduled for a hearing in September 2007.³

By letter dated September 18, 2007, Mr. Carver requested an adjournment of the hearing for 60 days to accommodate settlement negotiations and the finalizing of a draft agreement, a copy of which was enclosed with the September 18 correspondence. The hearing on both cases was adjourned, as Judge Gerson's handwritten note on the September 18 letter states "Signed agreement to be provided within 30 days".

ALJ Gerson, in a letter to counsel dated March 5, 2009, notified the parties that the cases remained open on the docket despite the September 2007 letter from Mr. Carver. The attorneys were directed to confer and then advise the judge, in writing no later than March 24, 2009, of the status of the matters.

In a letter dated March 24, 2009, Mr. Ashkinaze provided Judge Gerson with details of the parties' settlement discussions and advised that if the cases were not finally settled by May 1, then a settlement conference with the judge, counsel and the parties would be scheduled.⁴

³ Sometime between December 2006 and September 2007 ALJ Reiner retired and the cases were assigned to ALJ Jeffrey A. Gerson.

⁴ A copy of Mr. Ashkinaze's March 24, 2009 letter was sent to Christopher A. Botta, Esq., who apparently replaced Mr. Carver as

On May 1, 2009 Mr. Ashkinaze again wrote to Judge Gerson and advised that progress had been made toward settlement but no final agreement had been reached. On May 15, 2009 the OAL transmitted a notice to the parties scheduling a prehearing conference on June 17.

On June 17, 2009 a stipulation of settlement with prejudice was signed by Mr. Binaghi, Mr. LaGrossa, Mr. Botta and Mr. Ashkinaze, and filed with the OAL. The Initial Decision issued by Judge Gerson, dated June 18, 2009 and filed with the SADC on June 25, notes that the stipulation is marked "DRAFT" but represents a final agreement. Judge Gerson approved the settlement, concluding that the stipulation conformed with OAL requirements governing settlements; accordingly, the ALJ recommended that the Stokes Farm-LaGrossa cases be dismissed and that the matters be deemed concluded.

STIPULATION OF SETTLEMENT

The "Stipulation of Settlement with Prejudice", a copy of which is attached to this final decision, provides in relevant part as follows:

- the planting of at least ten (10) 5'-6' tall Cypress trees by Stokes Farm on its property, no later than November 15, 2009, creating a vegetative buffer between the greenhouses and the LaGrossas' residence.
- Stokes Farm's responsibility to maintain the Cypress trees and to replace those that may die.
- the ability of the LaGrossas, at their sole expense, to plant trees on their property as a supplemental buffer if they so choose.

counsel for Stokes Farm.

- recognition that Stokes Farm is a commercial farm whose operations are permitted activities, with the LaGrossas agreeing not to file any further complaints regarding the operation of Stokes Farm, except to enforce the settlement agreement and/or Binaghi's compliance with the laws governing commercial farms.
- withdrawal of the LaGrossas' ethics complaint against Binaghi.
- Stokes Farm's responsibility at its sole expense to maintain existing ventilation baffles on the greenhouses abutting the LaGrossa property so long as the greenhouses are in use.
- Stokes Farm's responsibility at its sole expense to clean-up and maintain its parking lot adjacent to the LaGrossa's residential driveway.
- withdrawal of the parties' OAL claims.
- the parties' mutual release of all other claims for personal injury; property damage; violations of local building, land use and/or zoning codes; and the use of chemicals or other substances used in connection with the Stokes Farm.

As stated earlier, the settlement agreement was signed by Alan S. Ashkinaze, Esq., attorney for James and Wilda LaGrossa; Christopher C. Botta, Esq., attorney for Ronald Binaghi and Stokes Farm; Ronald Binaghi, Jr.; and James LaGrossa. Wilda LaGrossa did not sign the agreement.

LEGAL DISCUSSION

The Initial Decision by ALJ Gerson recommends approval of the written and executed settlement agreement based on findings that the stipulation comported with N.J.A.C. 1:1-19.1. That regulation provides, in pertinent part, as follows:

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

The SADC was not a party in either of the Stokes Farm-LaGrossa cases, and the stipulation was reduced to writing and signed by the parties and their attorneys. N.J.A.C.

1:1-19.1(a)1.⁵ ALJ Gerson determined that the safeguard requirements of N.J.A.C. 1:1-19.1(b) had been met and issued an Initial Decision incorporating and approving the settlement terms. There is nothing in the record to disturb these conclusions, and the SADC **AFFIRMS** the ALJ's findings in respect to compliance with OAL rules governing settlements.

It is well established that the settlement of litigation is encouraged as a matter of public policy by courts and administrative agencies. Settlements permit

⁵ The SADC notes that Wilda LaGrossa did not sign the stipulation of settlement and that the record does not disclose any reason for that absence. However, the SADC is satisfied that the consistent references in the stipulation to "the parties" and to "the LaGrossas", coupled with the signature by Mr. Ashkinaze, the LaGrossas' attorney in these matters for the past several years, binds Mrs. LaGrossa to the terms of the settlement.

litigants to resolve their disputes on mutually-acceptable terms rather than risk exposure to an adverse result, save the parties considerable time and expenses, and facilitate the administration of justice by conserving government resources. DEG, LLC v. Township of Fairfield, 198 N.J. 242, 259 (2009).

Notwithstanding the SADC's affirmance of the Initial Decision, the agency expresses its reservations with regard to some of the language contained in paragraph 2 of the settlement stipulation. In part, paragraph 2 sets forth that Stokes Farm engages in permitted commercial farming operations. Given that the Stokes Farm-LaGrossa dispute was settled prior to trial, there is no evidence in the record that Stokes Farm is a "commercial farm" as defined in N.J.S.A. 4:1C-3 of the Right to Farm Act or that the farm engages in any of the permitted activities recognized in N.J.S.A. 4:1C-9. We are not concluding that Stokes Farm cannot satisfy the statutory criteria for "commercial farm" eligibility or that the farm is not engaging in protected agricultural activities; rather, the SADC notes that the settlement made those legal issues moot.

CONCLUSION

For the reasons set forth above, the SADC **AFFIRMS** ALJ Gerson's Initial Decision in this matter, but tempers this holding with the observation that there is no record evidence supporting the legal conclusions that Stokes Farm is a commercial farm engaging in permitted agricultural

activities.

IT IS SO ORDERED.

Dated: July ____, 2009

Douglas H. Fisher, Chairman,
State Agriculture Development
Committee

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