

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE STATE OF NEW YORK and
THE CENTRAL PINE BARRENS JOINT
PLANNING AND POLICY COMMISSION,

Plaintiffs,

- against -

STEVEN AFFATATO, DOLORES ALBERTO and
AFFA ORGANICS, INC.,

Defendants.

Index No. 2014-4697

Hon. Joseph C. Pastoressa

~~[PROPOSED]~~ CONSENT JUDGMENT and Stipulation

WHEREAS, plaintiffs, the State of New York and the Central Pine Barrens Joint Planning and Policy Commission (the "Commission" and together, the "State"), commenced this action on March 5, 2014, against defendants Stephen Affatato, Affa Organics, Inc. (together, the "Affatato Defendants"), and Dolores Alberto ("Alberto" and with the Affatato Defendants, "Defendants") by filing a verified complaint (the "Complaint") alleging Defendants had violated the Long Island Central Pine Barrens Protection Act ("Pine Barrens Protection Act"), the Comprehensive Land Use Plan promulgated pursuant to the Act, and a conservation easement granted by the Commission to defendant Alberto's predecessor-in-interest, by clearing vegetation from, grading, and excavating 2.53 acres located on Suffolk County Tax Map Numbers 200-563-3-2 thru 6, 9, 10, 15, and 1 thru 20 (the "Site"), on or about October 12, 2012, and by seeking to impose

civil penalties under Environmental Conservation Law § 57-0136, compensatory damages and restitution under the conservation easement, and obtain remediation of the Site; and

WHEREAS, on May 30, 2018, the Court granted partial summary judgment in plaintiff's favor against the Affatato Defendants, finding liability of their part for the violations asserted by the State of the Pine Barrens Protection Act, the Comprehensive Land Use Plan, and the conservation easement; and

WHEREAS, on May 30, 2018, the Court granted partial summary judgment in favor of Alberto against the Affatato Defendants on her cross-claims for specific performance or breach of contract; and

WHEREAS, since the Court's order of May 30, 2018, the parties have engaged in ongoing litigation regarding the restoration of the Site and the amount of the civil penalties owed to the State for the abovementioned violations of law; and

WHEREAS, the parties wish to resolve this matter according to the following terms, without further litigation, and the State concluding that entry of this Consent Judgment is in the public interest;

IT IS HEREBY STIPULATED, ORDERED, AND DECREED, as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Environmental Conservation Law Articles 49 and 57, and Judiciary Law § 140-b. Defendants hereby waive all objections and defenses they may have to

the jurisdiction of the Court or to venue in this County. The Court shall have continuing jurisdiction to enforce the terms of this Consent Judgment and to resolve any disputes that may arise hereunder.

II. APPLICABILITY

2. The obligations of this Consent Judgment apply to and are binding upon the State and Defendants and their agents, heirs, successors, and assigns.

3. No transfer of ownership of the Site or any portion thereof shall relieve the Affatato Defendants of their obligation to ensure that the terms of the Consent Judgment are implemented.

III. EFFECTIVE DATE

4. The effective date of this Consent Judgment ("Effective Date") is the date the Court-approved Consent Judgment showing entry by the County Clerk is filed on the NYSCEF docket for this matter.

IV. IMPLEMENTATION OF THE RESTORATION PLAN

5. The Affatato Defendants will carry out at their expense the Comprehensive Restoration and Monitoring Plan (the "Restoration Plan"), attached hereto as Exhibit A, to restore the Site.

6. For the avoidance of doubt, Defendants authorize the State, including agents and employees thereof, to access the Site to inspect and for any other purposes concerning implementation of the Restoration Plan, during ordinary business hours.

V. MONETARY PENALTIES

7. The Affatato Defendants shall pay the Commission a civil penalty in the amount of one hundred thousand dollars (\$100,000).

8. The Affatato Defendants may satisfy the monetary penalty owed in a single payment of \$100,000 or in installment payments, each paid in accordance with Paragraph 9. Any installments shall be made as follows:

- First payment of at least \$25,000, due within 15 business days of the Effective Date;
- Second payment, together with the first payment, totaling at least \$50,000, due within eight (8) months of the Effective Date;
- Third payment, together with the first and second payments, totaling at least \$75,000, due within sixteen (16) months of the Effective Date;
- Fourth and final payment, together with all prior payments, totaling \$100,000, due within two (2) years of the Effective Date.

If the Affatato Defendants elect to satisfy the monetary penalty owed through the payment of installments, the Affatato Defendants shall also be liable for interest at a rate of 9.0% per annum on any such amounts outstanding.

9. All payments shall be made by the Affatato Defendants or their counsel by mailing a personal check or bank check made out to "Central Pine Barrens Joint Planning and Policy Commission" to counsel for the Commission at the following address:

Mihir Desai
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street

New York, NY 10005

10. If the Affatato Defendants fail to make any payment of the payable portion when due in accordance with paragraph 8 above, the complete payable penalty of \$100,000 shall become immediately due and subject to entry of judgment. Upon application by the State at any time after the Affatato Defendants fail to make such payments when due under paragraph 8, the Clerk shall enter judgment in the amount of One Hundred Thousand Dollars (\$100,000), minus any penalty amount and interest already paid, against the Affatato Defendants. The Affatato Defendants consent to entry of judgment in this Court by the State against the Affatato Defendants in that amount.

VI. STIPULATED PENALTIES

11. If the Affatato Defendants fail to comply with the requirements set forth in Paragraphs 8 and 9 within five (5) days of a payment becoming due, the Affatato Defendants shall pay stipulated penalties of One Hundred and Fifty Dollars (\$150) per day, which shall accrue until the balance due is satisfactorily paid. The Affatato Defendants shall pay any stipulated penalty within forty-five (45) days of receiving the written demand from the Commission.

12. If the Affatato Defendants fail to pay the civil penalties set forth in Paragraph 11, the Affatato Defendants shall also be liable for interest on such penalties, as provided for in New York Civil Practice Law and Rules § 5004, accruing as of the date payment became due.

13. The stipulated penalties provided for in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the Commission for the Affatato Defendants' violation of this Consent Judgment or applicable law.

14. As to all stipulated penalties, the Affatato Defendants consent to entry of judgment in this Court by the State against the Affatato Defendants in the amount of the penalty.

VII. FINANCIAL SECURITY ON THE RESTORATION PLAN

15. The Affatato Defendants agree to provide a financial security to ensure that adequate funds are available to address the costs to be incurred by the State in the event of any material breach by the Affatato Defendants of the obligations of the Restoration Plan ("Financial Security").

16. The Affatato Defendants may fulfill their obligation to provide the Financial Security by securing a bond in the amount of \$200,000 within 45 days of the Effective Date, if such bond is procured from an underwriter or broker who is licensed by the State of New York to sell such financial instruments. The bond shall inure to the benefit of the Commission to be used for payment of the costs of compliance with the Restoration Plan in the event of any material breach by the Affatato Defendants of the obligations of the Restoration Plan.

17. If the Affatato Defendants have not provided a bond acceptable to the Commission by 45 days after the Effective Date, a suspended payment in the

amount of \$200,000, over and above the civil penalty set forth in Paragraph 7 above, will be imposed. This suspended payment is to be used for payment of the costs of compliance with the Restoration Plan in the event of any material breach by the Affatato Defendants of the obligations of the Restoration Plan. The suspended payment will be due and owing in its entirety thirty days (30) after the Commission notifies the Affatato Defendants that such breach has taken place and makes written demand for this suspended payment unless the Affatato Defendants have remedied the breach to the satisfaction of the Commission in the intervening period. Once this suspended payment becomes due, upon application by the State, the Clerk shall enter judgment against the Affatato Defendants in the amount of Two Hundred Thousand Dollars (\$200,000), or such lesser amount as may have been demanded by the Commission. The Affatato Defendants consent to entry of judgment in this Court by the State against the Affatato Defendants in the amount demanded by the Commission in the event that the conditions of this paragraph are met.

VIII. TRANSFER OF OWNERSHIP OF THE SITE

18. It is contemplated that ownership of the Site will be transferred to Affa Organics, Inc. This Consent Judgment does not require transfer of ownership of the Site to be completed as a condition of compliance.

19. In settlement of all claims between the Affatato Defendants and Alberto, closing of the sale of the Site shall take place within 60 days of the Effective Date.

20. The original purchase price of \$125,000.00 is reduced to \$110,000.00. The Affatato Defendants and Alberto acknowledge that \$12,500.00 is being held in escrow by Alberto's attorney and that said amount shall be applied toward the purchase price leaving a balance to be paid (by bank check only) at closing of \$97,500.00 subject to adjustments such as taxes as set forth in the original contract of sale.

21. The Affatato Defendants and Alberto further agree that all fractional Pine Barrens credits (originally provided in exchange for and/or in connection with the conservation easement affecting the Site), if any remain and are transferable by Alberto ("Land Credits"), shall become the property of the purchaser upon the closing of the sale of the Site as set forth hereinabove. If any documents are required to accomplish the transfer of such Land Credits, all such documents shall be prepared and provided by the Affatato Defendants' attorney. Alberto shall reasonably cooperate and execute all documents reasonably necessary to accomplish the transfer of the Land Credits. The Affatato Defendants acknowledge that Alberto makes no representations, warranties nor guarantees as to the usefulness or value of the Land Credits, if any, nor that the Land Credits are transferable or redeemable.

22. Upon the completion of the closing of the sale of the Site, the Affatato Defendants and Alberto shall exchange general releases in the forms annexed hereto as Exhibit "B" as well as a stipulation of discontinuance, with prejudice.

23. In the event the Affatato Defendants fail to timely close, Alberto's attorney shall release the \$12,500.00 held in escrow and pay same to Alberto and Alberto shall have the right to retain ownership of the Site and/or sell the Site to another person or entity.

IX. RELEASES

24. Upon the Affatato Defendants' compliance with the terms and conditions of this Consent Judgment, including the full implementation of the Restoration Plan and payment of the civil penalty, the State agrees to release the Affatato Defendants from all claims that are the subject of this action, including the suspended payment set forth in Paragraph 17 above to the extent that it has not become due and owing.

25. Upon the full execution of this Consent Judgment by all parties, the State agrees to release Alberto from all claims that are the subject of this action, by the filing of a stipulation of discontinuance, with prejudice.

X. NOTICES

26. The Affatato Defendants shall serve any communication pursuant to this Consent Judgment via email upon:

Mihir Desai
Assistant Attorney General

New York State Office of the Attorney General
Mihir.Desai@ag.ny.gov
(with copy to Elizabeth.Morgan@ag.ny.gov)

and

John C. Milazzo
Staff Counsel
Central Pine Barrens Joint Planning and Policy Commission
John.Milazzo@SCWA.com

27. The Commission shall serve any demand for stipulated penalties pursuant to Paragraphs 11 and 12 by certified United States mail, return receipt requested, or by recognized overnight mail service that provides proof of delivery, upon:

Stephen Affatato and Affa Organics, Inc.
160 Long Island Avenue
Holtsville, New York 11742

with a courtesy email to Frederick Stern, Esq. at scheyerstern@gmail.com.

XI. MISCELLANEOUS

28. This Consent Judgment shall constitute the entire agreement of the State and Defendants with respect to settlement of the violations alleged in the Complaint.

29. Any failure to comply fully and timely with any term or condition of this Consent Judgment shall constitute a violation of this Consent Judgment. In addition to requiring payment of the bond or suspended payment amount set forth in Paragraphs 16 and 17, as applicable, such violation may subject the Affatato

Defendants to civil enforcement action for injunctive relief, statutory penalties, and other sanctions.

30. If the Affatato Defendants cannot comply with a deadline or requirement of this Consent Judgment because of a war, strike, riot, or other condition which was not caused by the negligence or willful misconduct of the Affatato Defendants and which could not have been avoided by the Affatato Defendants through the exercise of due care, the Affatato Defendants shall apply in writing to the Commission as soon as practicable after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

31. The Affatato Defendants shall indemnify and hold the Commission, the State of New York and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of the Affatato Defendants, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Consent Judgment by the Affatato Defendants or their employees, servants, agents, successors or assigns.

32. This Consent Judgment may be enforced by the Attorney General of the State of New York before this Court. For purposes of this Consent Judgment, the parties agree that the Court has continuing jurisdiction in this matter to enforce the terms of this Consent Judgment and that it shall retain jurisdiction until such time that the Affatato Defendants have fulfilled their obligations hereunder.

33. The provisions of this Consent Judgment shall inure to the benefit of and be binding upon the State and upon the Defendants, their agents, heirs, legatees, successors (including successors in title), trustees in bankruptcy, and assigns.

34. This Consent Judgment may be executed in counterparts, all of which when taken together, shall constitute an original of this Consent Judgment, and by electronic signature. Copies of signatures, including copies transmitted electronically, shall be treated as originals.

XII. COMPLIANCE WITH FEDERAL TAX REPORTING REQUIREMENTS

35. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the Office of Attorney General of the State of New York ("OAG") is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including consent judgments), that require a payor to pay an aggregate amount that OAG reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." OAG is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as

described below, may subject parties to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1.

36. To provide OAG with sufficient information to enable it to fulfill these reporting obligations to IRS, the Affatato Defendants shall:

- a. Complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Within 30 days of the Effective Date of this Consent Judgment (as defined in Paragraph 4 above), email its completed IRS Form W-9 to Assistant Attorney General Mihir A. Desai at mihir.desai@ag.ny.gov, or mail the completed IRS Form W-9 to the following address:

Mihir A. Desai
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

- c. If either of the Affatato Defendants have certified in their completed IRS Form W-9 that they have applied for a TIN and that the TIN has not been issued to that defendant within thirty (30) days after the Effective Date of this Consent Judgment (as defined in Paragraph 4 of this Consent Judgment), then that defendant shall further:
 - i. notify OAG by e-mailing Assistant Attorney General Mihir A. Desai at mihir.desai@ag.ny.gov of this fact within forty-five (45) days after the Effective Date of this Consent Judgment (as defined in Paragraph 4 of this Consent Judgment); and
 - ii. Within five (5) days of that defendant's receipt of its TIN, provide that defendant's TIN via email to Assistant Attorney General Mihir A. Desai at mihir.desai@ag.ny.gov or mail that defendant's TIN to the following address:

Mihir A. Desai
Assistant Attorney General
New York State Office of the Attorney General

Environmental Protection Bureau
28 Liberty Street, 19th Floor
New York, NY 10005

XIII. EXHIBITS

37. The following attachments are attached to and incorporated into this

Consent Judgment:

- "Exhibit A" is the Restoration Plan.

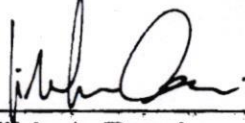
"Exhibit B" are the forms of general release to be executed and exchanged by the Affatato Defendants and Alberto.

** Signatures on following page **

Dated: New York, New York
March 15, 2024

AGREED TO:

LETITIA JAMES
Attorney General
State of New York

By: 
Mihir A. Desai
28 Liberty Street
New York, New York 10005
(212) 416-8478


*Counsel for Plaintiffs
The State of New York and
the Central Pine Barrens Joint
Planning and Policy Commission*

SCHEYER & STERN, LLC

By: *Fredrick Stern*
Fredrick P. Stern, Esq.
110 Lake Avenue So., Suite 46
Nesconset, NY 11767
(631)265-8500

*Counsel for Defendants
Steven Affatato and Affa Organics,
Inc.*

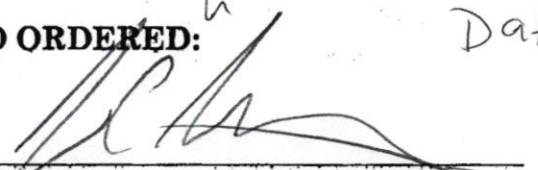
RICHARD M. GREENE, P.C.

By: 
Richard M. Greene
180 Froehlich Farm Blvd.
Woodbury, New York, 11797
(516) 364-7455

*Counsel for Defendant
Dolores Alberto*

^u
SO ORDERED:

Dated: 4/8/24


Hon. Joseph C. Pastoressa, J.S.C.