

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 01-0020
)	
HENRY J. BLAKE, JR.)	DECISION
Appellant)	
)	February 19, 2003
_____)	

Henry J. Blake, Jr., appeals an Initial Administrative Determination [IAD] by the Restricted Access Management Program [RAM], dated August 1, 2001, issued under the North Pacific Groundfish and Crab License Limitation Program [LLP].¹ Mr. Blake can appeal the IAD because it directly and adversely affects his interests.²

Mr. Blake applied for an LLP groundfish license based on the fishing history of the F/V NEPTUNE, ADFG # 19940. To receive a license based on the fishing history of the F/V NEPTUNE, Mr. Blake had to either own the F/V NEPTUNE on June 17, 1995 or own the fishing history of the F/V NEPTUNE that meets the requirements for an LLP license.³ Mr. Blake claimed in his application that he owned the F/V NEPTUNE on June 17, 1995.

RAM compared Mr. Blake's application with the official LLP record. The official LLP record listed Hughie R. Blake as the owner of the F/V NEPTUNE on June 17, 1995, not Henry J. Blake, Jr. RAM sent Mr. Blake a Notice of Opportunity to Submit Evidence, informing him of the discrepancy between Mr. Blake's application and the official LLP record. Mr. Blake did not respond to the Notice of Opportunity to Submit Evidence. It is possible that he did not receive it.⁴

RAM then issued an IAD. It stated that Mr. Blake had not responded to the Notice of Opportunity to Submit Evidence and that Mr. Blake had not shown that he met the requirements for an LLP license based on the fishing history of the F/V NEPTUNE.

The record has sufficient information for me to decide Mr. Blake's Appeal, as required by 50 C.F.R. § 679.43(g)(2). I therefore close the record and issue this Decision.

¹ The LLP is located in 50 C.F.R. § 679. Specifically: 50 C.F.R. § 679.1(j) (purpose and scope); 50 C.F.R. § 679.2 (definitions); 50 C.F.R. § 679.4(a)(6) (definition of harvesting privilege); 50 C.F.R. § 679.4(k)(requirements for licenses); 50 C.F.R. § 679.7 (prohibitions); 50 C.F.R. § 679.43 (appeals). The LLP regulations are on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/regs/summary.htm>

² 50 C.F.R. § 679.43(b).

³ 50 C.F.R. § 679.2 (definition of eligible applicant).

⁴ The IAD notes that RAM did not receive a Return Receipt card for the Notice.

SUMMARY

The IAD is affirmed. Henry J. Blake, Jr., is not an eligible applicant, as defined by 50 C.F.R. § 679.2, for an LLP license based on the fishing history of the F/V NEPTUNE. Mr. Blake sold the F/V NEPTUNE by a written contract on June 12, 1995. The fact that the buyer of the vessel did not pay for the vessel as required by the contract and declared bankruptcy does not mean that Mr. Blake retained ownership of the vessel. The contract did not delay transfer of ownership from Mr. Blake of the vessel until the buyer made all the payments. The contract did not retain to Mr. Blake the fishing history of the F/V NEPTUNE. Mr. Blake therefore neither owned the F/V NEPTUNE on June 17, 1995 nor owned the fishing history of the F/V NEPTUNE, apart from the vessel.

ISSUE

1. Is Mr. Blake an eligible applicant for the LLP license based on the fishing history of the F/V NEPTUNE?

ANALYSIS

1. Is Mr. Blake an eligible applicant for an LLP license based on the fishing history of the F/V NEPTUNE? No.

To receive the LLP license based on the fishing history of the F/V NEPTUNE, Mr. Blake must be the “eligible applicant” for that license.⁵ An eligible applicant is a person who owned a vessel with a qualifying fishing history on June 17, 1995 or who owned the qualifying fishing history, apart from the vessel.⁶

A. Did Mr. Blake own the FV NEPTUNE on June 17, 1995? No.

The IAD determined that Mr. Blake did not own the F/V NEPTUNE on June 17, 1995. RAM has awarded the LLP license based on the fishing history of the F/V NEPTUNE to Michael Sine. Mr. Blake acknowledges that he and his wife, Linda Blake, signed an Agreement with Michael Sine and his wife, Sherrie Sine, on June 12, 1995.⁷ On its face, the Agreement provides for the sale of the F/V NEPTUNE to the Sines.

⁵ “A groundfish license will be issued to an eligible applicant that meets the criteria [for documented harvests] in paragraph (k)(4)(i) and (k)(4)(ii).” 50 C.F.R. § 679.4(k)(4).

⁶ 50 C.F.R. § 679.2 (definition of eligible applicant). This definition contains two other ways a person can be an eligible applicant, neither of which Mr. Blake is claiming to meet. One applies to the Norton Sound king crab summer fishery, the other to the Rehabilitation Act of 1973.

⁷ Bill of Sale and Mortgage Agreement, signed June 12, 1995 [Exhibit 1].

Mr. Blake argues that the sale was not completed because the Sines declared bankruptcy and did not make the payments for the vessel required by the Agreement. I assume that the facts asserted by Mr. Blake are true: the Sines were obligated to pay \$30,000 over the life of the Agreement; the Sines paid \$6,000 and therefore owed the Blakes \$24,000; the Blakes renegotiated the payment schedule with the Sines four times; on November 27, 1996, Mr. Sine told the Blakes he would make a payment no later than December 4, 1996 and instead filed bankruptcy on November 29, 1996.

The issue is whether the Sines's failure to abide by the terms of the Agreement and pay for the vessel means that Mr. Blake owned the F/V NEPTUNE on June 17, 1995. I resolve this by analyzing the terms of the Agreement.

The Agreement is entitled, "Bill of Sale and Mortgage Agreement." The parties signed it on June 12, 1995. The Agreement identifies the Blakes as the sellers and the Sines as the buyers. It states:

The buyers wish to purchase the F/V NEPTUNE and the Hand Troll Permit from the seller this [sic] includes items of longline gear and troll gear and the supplies associated with them. The Buyers have inspected the vessel **and are purchasing the vessel** in its present condition. [emphasis added]⁸

There is no provision delaying the effective date of the Agreement. There is no provision stating that the purchase and Bill of Sale occurs on any other date than the date the parties signed the Agreement.

The Agreement specifies that if the Sines do not make the required payments, they owe the Blakes any costs of collection. The Agreement specifies that, if the Sines fail to make a payment or file bankruptcy, the Sines are in default and the entire amount owing under the Agreement becomes due immediately. The Agreement does not, however, delay the change in ownership of the vessel until the Sines complete payment for the vessel.

I therefore find that Henry and Linda Blake sold the F/V NEPTUNE on June 12, 1995. I find that Mr. Blake did not own the F/V NEPTUNE on June 17, 1995, notwithstanding that the Sines did not make the payments as required under the parties' Agreement.

I wish to address three additional points: Mr. Blake's assertion of a security interest in the vessel, RAM's initial notice to Mr. Blake that Hughie Blake was the eligible applicant for this license, and the contents of the abstract of title.

⁸ Exhibit 1. Mr. Blake at first submitted an unsigned copy of an Agreement, which was a draft agreement, not one the parties signed. [Exhibit 2]. The draft Agreement granted Mr. Blake a security interest in his handtroll permit. Alaska law does not permit this. AS 16.43.150(g). So the parties redrafted the Agreement and took out that provision. The draft Agreement did not grant Mr. Blake a security interest in the vessel.

First, Mr. Blake asserts that he had a secured interest in the vessel. But the Agreement does not provide for that. It does not provide that Mr. Blake can repossess the vessel, in the event of default, or that title reverts back to him, in the event of default. Mr. Blake argued to the bankruptcy court that he had a secured interest in the vessel. The court determined that Mr. Blake did not have a secured interest in the vessel. It determined that he had an unsecured claim against the Sines's bankruptcy estate.⁹ Since Mr. Blake did not have a security interest in the vessel, I do not analyze whether, if he did, that would help him prove he was an eligible applicant.

Second, after RAM received Mr. Blake's application, RAM sent him a Notice of Opportunity to Submit Evidence.¹⁰ The Notice informed Mr. Blake that the official LLP record indicated that Hughie R. Blake was the owner of the vessel on June 17, 1995. Mr. Blake submitted a bill of sale for the F/V NEPTUNE from Hughie R. Blake and Henry J. Blake, Jr., which has an effective date of May 30, 1995.¹¹ This is sufficient proof that Hughie Blake was not the owner of the vessel on June 17, 1995 and that Hughie Blake sold his interest in the F/V NEPTUNE to Henry Blake on May 30, 1995.

But the problem, of course, is that the Blakes sold the vessel to the Sines on June 12, 1995. And despite RAM's Notice to Mr. Blake, RAM has determined that Mr. Sine is the eligible applicant for the LLP license based on the F/V NEPTUNE.¹²

Third, this Office obtained an abstract of title for the F/V NEPTUNE. It lists Hughie E. Blake and Ronald C. Blake as the owners of the vessel as of June 17, 1995.¹³ Neither Hughie E. Blake nor Ronald C. Blake applied for the LLP license based on the fishing history of the F/V NEPTUNE. Therefore, neither of them placed any evidence in the record attesting to their ownership of the vessel on June 17, 1995. The preponderance of evidence in the record – in particular the bill of sale from Hughie Blake to Henry Blake dated May 30, 1995 and the bill of sale from Henry and Linda Blake to Michael and Sherrie Sine dated June 12, 1995 – is that neither Hughie nor Ronald Blake had any ownership interest in the F/V NEPTUNE on June 17, 1995.

⁹ Order Granting Judgment on the Pleadings and Judgment, *In re Michael W. Sine and Sherrie Sine*, United States Bankruptcy Court for the District of Alaska, Bancap No. 98-1010, Adversary No. J 96-01118-001-DMD, June 2, 1998 [Exhibit 3].

¹⁰ Notice of Opportunity to Submit Evidence, January 19, 2000 [Exhibit 4].

¹¹ Exhibit 5.

¹² The NMFS Alaska region website lists the LLP licenses issued by RAM. It shows that RAM issued Mike Sine a transferable LLP license and the original qualifying vessel is the F/V NEPTUNE. <http://www.fakr.noaa.gov/ram/llp.htm>, visited December 18, 2002.

¹³ General Index or Abstract of Title, issued May 6, 2002. [Exhibit 6] It shows a sale of the vessel on September 4, 1990 from Gregory and Deborah Cushing to Hughie and Ronald Blake.

**B. Does Henry Blake own the fishing history of the F/V NEPTUNE, apart from the vessel?
No.**

If an applicant did not own a vessel with an LLP-qualifying fishing history on June 17, 1995, the applicant may still be eligible for an LLP license if the applicant owns the qualifying fishing history, apart from the vessel. To prove that he retained ownership of the fishing history, Mr. Blake would have to show that he sold the F/V NEPTUNE according to the express terms of a written contract that clearly and unambiguously severed the fishing history of the vessel from ownership of the vessel.¹⁴

Mr. Blake does not make that argument. And the only written contract Mr. Blake submitted – the Bill of Sale and Mortgage Agreement – has no terms which can be interpreted as severing the fishing history of the F/V NEPTUNE from the vessel itself. I therefore find that Mr. Blake does not own the fishing history of the F/V NEPTUNE.

I am sympathetic to Mr. Blake’s situation. He sold his boat. He did not get paid for it. And the buyer of the boat discharged his debt to Mr. Blake in bankruptcy.¹⁵ The LLP regulations do not, however, make any exception for vessel owners, like Mr. Blake, who are not paid because the buyer declares bankruptcy. The LLP regulations award an LLP license to the owner of the vessel on June 17, 1995 or the owner of the fishing history apart from the vessel.

Since Mr. Blake did not own the F/V NEPTUNE on June 17, 1995, and does not own the fishing history of the F/V NEPTUNE, I conclude that he is not an eligible applicant for an LLP license based on the fishing history of the F/V NEPTUNE.

FINDINGS OF FACT

1. Henry J. Blake, Jr., and Linda Blake sold the F/V NEPTUNE to Michael and Sherrie Sine on June 12, 1995.
2. Henry J. Blake, Jr., did not own the F/V NEPTUNE on June 17, 1995.
3. Henry J. Blake, Jr., did not retain the fishing history of the F/V NEPTUNE, when he and Linda Blake sold the F/V NEPTUNE on June 12, 1995.

¹⁴ 50 C.F.R. § 679.2, definition of eligible applicant (2): a person to whom the LLP-qualifying fishing history of a vessel “has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained.”

¹⁵ Docket List, Bankruptcy Petition # 96-01118, obtained from U.S. Bankruptcy Court, District of Alaska (Juneau), April 16, 2002 at page 7 [Exhibit 7].

CONCLUSION OF LAW

1. Henry J. Blake, Jr., is not an eligible applicant for an LLP license based on the fishing history of the F/V NEPTUNE.

DISPOSITION

The IAD is AFFIRMED. This Decision takes effect March 21, 2003, unless by that date the Regional Administrator orders review of the Decision.

The Appellant or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, March 3, 2003. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement of points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer