

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of	)	Appeal No. 95-0086
	)	
ALEX EROFEEFF,	)	
Appellant	)	
	)	DECISION
and	)	
	)	
NAZARY BASARGIN,	)	
Respondent	)	November 1, 1996
_____	)	

STATEMENT OF THE CASE

Appellant Alex Erofeeff filed a timely of an Initial Administrative Determination [IAD] issued by the Restricted Access Management Division [Division] on April 10, 1995, under the Individual Fishing Quota [IFQ] Program for Pacific halibut and sablefish. The IAD awarded to Respondent Nazary Basargin the qualifying pounds resulting from Pacific halibut and sablefish landings made aboard the F/V CRUISER during the period December 22, 1989, through December 31, 1991, and denied the claim of Mr. Erofeeff to those qualifying pounds. The IAD found that Mr. Basargin owned the vessel during that period, and made the award on that basis. The IAD suspended the issuance of the Quota Share [QS], pending the exhaustion of all administrative remedies.

After several continuances, a hearing was held on February 1, 1996, at Homer, Alaska, before Appeals Officer James C. Hornaday. Mr. Erofeeff appeared by telephone and Mr. Basargin appeared in person. The parties were given until February 16, 1996, to supplement the record. Both parties filed briefs in support of their positions. Mr. Erofeeff and Mr. Basargin, and Fetinia Basargin (widow of Julian Basargin, sister of Mr. Erofeeff, and cousin of Mr. Basargin) testified. Both parties represented themselves at the hearing.

ISSUE

Whether the qualifying pounds resulting from certain Pacific halibut and sablefish landings aboard the F/V CRUISER during the period December 22, 1989, through December 31, 1991, were properly awarded to Mr. Basargin, as owner of the vessel, and denied to Mr. Erofeeff.

BACKGROUND

Mr. Erofeeff and Mr. Basargin filed conflicting applications with the Division, each claiming to be the owner of the F/V CRUISER between December 22, 1989, and December 31, 1991.

Mr. Basargin bases his claim of ownership on a bill of sale, a certificate of registration, and a U.S. Coast Guard abstract of title, which together show his ownership of the vessel between December 22, 1989, and at least through December 17, 1991.

Mr. Erofeeff's claim of ownership is based on (1) a Sales Agreement for the vessel, signed August 1, 1989, by Mr. Erofeeff and Fetinia Basargin, the widow and personal representative of the Estate of Julian Basargin; and (2) documents which show that he paid the mortgage on the vessel and the vessel's operating expenses. The Sales Agreement provided for the title of the vessel to not pass at the signing of the Agreement, but at a later date as agreed by the parties, at which time a bill of sale would be delivered. The Sales Agreement was not notarized or recorded. Mr. Erofeeff claims that he is the vessel's true owner, and that Mr. Basargin held title only as co-signor of the loan on the vessel.

## DISCUSSION

Under the IFQ program, as implemented by the Division, an applicant for the initial issuance of QS may receive credit only for legal landings of Pacific halibut or sablefish that were made from a vessel owned or leased by the applicant at the time of the landings. 50 C.F.R. § 679.40(a)(2).<sup>1</sup>

Both parties in this appeal claim to have been the owner of the F/V CRUISER at the time the landings in question were made. Federal regulation 50 C.F.R. § 679.40(a)(3)(ii) provides:

(ii) Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the U.S. Coast Guard abstract of title issued in respect of that vessel:

(B) A certificate of registration that is determinative as to vessel ownership;

(C) A bill of sale.

The best evidence of vessel ownership, if it exists, is a Coast Guard abstract of title. Absent any evidence that an abstract of title is erroneous or fraudulent, NMFS is required to accept that document as proof of ownership.<sup>2</sup> Evidence other than the three types of documents listed in 50 C.F.R. §

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<sup>1</sup>Formerly 50 C.F.R. 676.20(a)(1). Effective July 1, 1996, 50 C.F.R. Part 676 was removed and the regulations thereunder were renumbered. However, there have not been any changes material to the issues in this appeal.

<sup>2</sup>Weber v. Kochuten, Appeal No. 95-0122, June 18, 1996, at 3, *aff'd*, July 18, 1996; Prowler Partnership v. Samuelson, Appeal No. 95-0084, November 8, 1995, at 5; incorporated by reference in Prowler Partnership v. Samuelson, Decision on Reconsideration, March 12, 1996; *aff'd* March 14, 1996; *appeal pending*, Prowler Partnership v. National Marine Fisheries Service, Case No. A96126CIV (D.C. Alaska, complaint filed April 10, 1996).

679.40(a)(3)(ii) may not be used by the Division to affirmatively establish a party's ownership of a vessel. Such evidence may, however, be used by the Division to challenge the validity or accuracy of any of the three types of documents listed in the regulation. The Division is not required to accept a listed document at face value if there is reason to believe it may be erroneous or fraudulent. Thus, the Division may use evidence not listed in the regulation as the basis for rejecting a claim of vessel ownership, but not as the basis for accepting a claim of vessel ownership.<sup>3</sup>

Mr. Basargin submitted a U.S. Coast Guard abstract of title, dated January 17, 1995, as proof of his ownership of the F/V CRUISER. The abstract clearly shows that the vessel was sold to Mr. Basargin by bill of sale on December 22, 1989, and that he held title to the vessel until at least December 17, 1991. Mr. Erofeeff does not argue that the abstract of title is erroneous or fraudulent. He concedes its validity, as far as it goes, but asserts that it does not reflect his de facto role as the vessel's owner during the period of time in question. Mr. Erofeeff says he is the true owner because he signed a Sales Agreement for the vessel, operated the vessel, and paid the vessel's mortgage and expenses.

Mr. Erofeeff points to the wording of the Sales Agreement,<sup>4</sup> which shows that the parties to the Agreement intended that the title to the vessel was not to pass to him at the signing of the Agreement, but at a later date. Mr. Erofeeff (buyer) and Fetinia Basargin (seller) testified that the only reason the title was put in Mr. Basargin's name was because Mr. Erofeeff was not a U.S. citizen and could not hold title to the vessel. Their testimony, and other documents submitted by Mr. Erofeeff, indicate that Mr. Basargin was, in essence, only a guarantor of the loan obtained from SeaFirst Bank, Seattle, to purchase the vessel.

Mr. Basargin testified that Mr. Erofeeff would not have been able to obtain the loan had it not been for Mr. Basargin's signature, and that as a co-signor, he was fully liable for the vessel's financial and legal liabilities. He also argues that Mr. Erofeeff's Sales Agreement was not notarized, recorded, or consummated. He asserts that the Sales Agreement, which is dated August 1, 1989, was superseded by a different agreement to purchase between Mr. Erofeeff and the Estate of Julian Basargin, dated November 22, 1989. Finally, Mr. Basargin argues that Mr. Erofeeff, by his own admission, could not

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<sup>3</sup>Weber v. Kochuten, *supra*, at 5.

<sup>4</sup>The provision read: "Title: On such date as the parties agree to in writing, SELLER shall deliver title of the Cruiser to BUYER. SELLER shall also execute and deliver a bill of sale and other documents considered necessary or desirable by BUYER, or his agents, to transfer good and sufficient title of the Cruiser, and all other property transferred by this agreement to BUYER. Title to the Cruiser and all other property transferred by this agreement shall be transferred free of all liens and encumbrances, of whatever kind and nature. SELLER shall notify the United States Coast Guard of this sale and any other government agency requiring notice of this sale. The cost of transfer of title and all notices shall be the cost of SELLER."

have held title to the vessel during the years in question because he was not a U.S. citizen.

Neither of these Sales Agreements are recorded in the abstract of title. The abstract only shows that the December 22, 1989, bill of sale transferred title directly from Fetinia Basargin, as personal representative of Julian Basargin's Estate, to the Respondent. Nowhere on the abstract is Mr. Erofeeff shown as owner of the vessel. Regardless of any agreements that the Appellant may have executed with the previous owner, it is the bill of sale to Mr. Basargin that is recorded on the abstract, and under the IFQ regulations, the abstract governs.

The abstract is superior proof of vessel ownership, not only as a matter of law, but also, in this case, as a matter of fact. The Sales Agreement never ripened into a bill of sale and did not convey title to Mr. Erofeeff. His claim that he operated the vessel, and paid for the vessel's mortgage and operating expenses, even if true, cannot be superior to the abstract. For, as we have previously stated, it is ownership of a vessel, not mere operation, that governs who should receive credit for landings made from the vessel for the purposes of the IFQ program.<sup>5</sup>

Mr. Erofeeff contends that Mr. Basargin is taking an unfair advantage of him in this matter. However, the QS allocation process is not set up to redress past wrongs or failed business dealings or to settle private disputes between the parties.<sup>6</sup> I do not decide whether these facts create any other rights that Mr. Erofeeff may seek to enforce in another forum. I merely decide, for purposes of this appeal, that the Division properly awarded the qualifying pounds to Mr. Basargin, and properly denied awarding the qualifying pounds to Mr. Erofeeff.

#### FINDINGS OF FACT

The abstract of title for the F/V CRUISER for the period of December 22, 1989, through December 17, 1991, shows that Mr. Basargin held title to the vessel pursuant to a bill of sale.

#### CONCLUSIONS OF LAW

1. The abstract of title for the F/V CRUISER is superior to the Sales Agreement between the parties, and to the documents showing that Mr. Erofeeff operated the vessel and paid the vessel's mortgage and operating expenses, for purposes of establishing the vessel's ownership.
2. Mr. Basargin was the owner the F/V CRUISER from December 22, 1989, until at least December 17, 1991.

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<sup>5</sup>Prowler Partnership v. Samuelson, [Decision], at 6.

<sup>6</sup>See Seater v. Seater, Appeal No. 94-0010, June 6, 1995, *aff'd* June 9, 1995.

3. Qualifying pounds resulting from certain halibut and sablefish landings made from the F/V CRUISER during the period December 22, 1989, through December 17, 1991, were properly allocated to Mr. Basargin.

#### DISPOSITION

The Division's IAD, dated April 10, 1995, which is the subject of this appeal, is AFFIRMED. This decision takes effect on December 2, 1996, unless by that date the Regional Administrator orders review of the decision. Any party, including the Division, may submit a Motion for Reconsideration, but it must be received at this office not later than 10 days after the date of this decision, November 12, 1996.

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James C. Hornaday  
Appeals Officer

I concur in the factual findings of this decision and I have reviewed this decision to ensure compliance with applicable laws, regulations, and agency policies, and consistency with other appeals decisions of this office.

Because the prevailing party in this appeal still has an opportunity to receive QS and the corresponding IFQ for the 1996 fishing season, I recommend that the Regional Administrator expedite review of this decision and, if there is no substantial disagreement with it, promptly affirm the decision and thereby give it an immediate effective date.

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Randall J. Moen  
Appeals Officer