

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Applications of)	
)	Appeal No. 95-0114
SILVER ICE FISHERIES)	
PARTNERSHIP,)	
Appellant)	
)	DECISION
and)	
)	
ARCTIC SELECT SEAFOODS, INC.,)	
Respondent)	October 30, 1996
_____)	

STATEMENT OF THE CASE

Both Appellant, Silver Ice Fisheries Partnership, and Respondent, Arctic Select Seafoods, Inc., claim credit for quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program for the same landings of halibut and sablefish made from the F/V BLUE ICE between November 23, 1988, and January 1, 1991. Appellant claims it should receive QS credit for 100 percent of the landings made from the vessel. Respondent claims it should receive 50 percent credit. The vessel was owned during the period by an entity called the Silver Ice Fisheries Partnership, which consisted of three principals: Arctic Select Seafoods, Inc., Mark Maring, Inc., and Neil Anderson, Inc. On January 1, 1991, Respondent sold its entire interest in the Partnership to the remaining partners, who continued operations under the same name.

On June 9, 1995, the Restricted Access Management Division [Division] of the National Marine Fisheries Service issued an Initial Administrative Determination [IAD] affirming Respondent's claim on the basis that Respondent was a former partner of a dissolved partnership. The IAD also found that Appellant did not receive IFQ rights when it purchased Respondent's interests in the Partnership. The Division's records show that QS was issued to Silver Ice Fisheries Partnership based on an apportionment of 50 percent of the qualifying pounds for the period in question. QS that would result from the qualifying pounds allocated to Arctic Select Seafoods, Inc., has not been issued. Those qualifying pounds are the only pounds at stake in this appeal.

Appellant filed a timely appeal of the IAD, and Respondent filed a timely statement in response to Appellant's appeal.¹ Because the relevant facts are not in dispute, a hearing was not held. The

¹Due to diverse mailing and/or address errors, the response times initially granted to each party were extended.

Appellant submitted a final brief by mail; the Respondent made no further submission.

ISSUES

1. Whether the transfer of Respondent's interest in the Silver Ice Fisheries Partnership to Neil Anderson, Inc., and Mark Maring, Inc., dissolved the Partnership within the meaning of the IFQ program.
2. Whether Respondent lost its eligibility for QS when it transferred its interest in the Silver Ice Fisheries Partnership to Mark Maring, Inc., and Neil Anderson, Inc.

BACKGROUND

The Silver Ice Fisheries Partnership [Partnership] was formed November 15, 1988, by three Washington corporations: Arctic Select Seafoods, Inc., Mark F. Maring, Inc. and Neil Anderson, Inc. Arctic Select owned 50 percent of the Partnership, and Maring, Inc., and Anderson, Inc., each owned 25 percent. On November 23, 1988, pursuant to a purchase agreement with Respondent, the Partnership became the owner of the F/V POLAR MIST. The vessel's name was changed to the F/V BLUE ICE on December 9, 1988.² According to the Division's records, the vessel landed nearly two million pounds of sablefish and approximately 116,000 pounds of halibut in the 1989 and 1990 fishing seasons.

On January 1, 1991, Respondent sold its entire interest in the Partnership to the other two partners, Neil Anderson, Inc., and Mark F. Maring, Inc.³ Another entry to the abstract of title reads: "Change in General Partnership to: Silver Ice Fisheries Partnership, a general partnership composed of Mark F. Maring, Inc., Neil Anderson, Inc." This entry is undated, but it appears between two other entries dated May 3, 1990, and April 30, 1992. Thus, it is not inconsistent with an effective date of January 1, 1991.

The parties do not dispute the existence of the Partnership or the sale of Respondent's interest in it. They do, however, dispute whether the Partnership was "dissolved" when Respondent's interest was sold. Appellant contends that the sale of Respondent's interest in the Partnership did not dissolve the Partnership, either under Washington state law or the terms of the Partnership agreement.

The parties also dispute whether the terms of the sale included the transfer of IFQ fishing rights.

²See, the U.S. Coast Guard abstract of title for the F/V POLAR MIST.

³The "Agreement" for the sale of Arctic Select's interest in the Partnership is dated December 31, 1990. A separate "Acknowledgment of Transfer of Partnership Interest" was executed by the three principals on February 1, 1991. It contained recitals that the sale of the Partnership interest was "effective" as of January 1, 1991. Correspondence from the parties indicates they agree on January 1, 1991, as the operative date of the transfer.

Appellant claims that it did. The sales agreement provided that Respondent had no rights to any of the Partnership's compensation, assets or income, and released the remaining partners from any and all claims.

DISCUSSION

1. Whether the transfer of Respondent's interest in the Silver Ice Fisheries Partnership to Neil Anderson, Inc., and Mark Maring, Inc., dissolved the Partnership within the meaning of the IFQ program.

To qualify for QS under the IFQ program, a person (including a partnership) must have owned or leased a vessel that made legal landings of halibut or sablefish during a QS qualifying year: 1988, 1989, or 1990.⁴ A former partner of a dissolved partnership that would otherwise qualify for QS may apply for QS in proportion to the partner's interest in the dissolved partnership.⁵

When Respondent sold its interest in the Partnership, the Partnership was reduced from three to two members.⁶ The Division concluded in Appellant's IAD that the sale dissolved the Partnership. The Division based its conclusion on the premise that a partnership is dissolved when a change occurs in its membership.

The IFQ regulations do not define or explain what is meant by a dissolved partnership. Appellant contends that the Partnership was not dissolved when Respondent sold its interest to the remaining partners. Appellant cites Washington State law and provisions within the Partnership agreement in support of its position.

This Office has ruled that the Division has the authority to reasonably interpret its own regulations,⁷ and that the Division is not bound by private agreements when interpreting an IFQ regulation.⁸ We now hold that the Division is also not bound by state law when defining and interpreting terms in the IFQ regulations for purposes of the IFQ program. Here, the Division has, in essence, defined what is meant

⁴See, 50 C.F.R. § 676.20(a)(1).

⁵Id.

⁶This was duly noted in the U.S. Coast Guard abstract of title for the F/V BLUE ICE.

⁷See, David A. Cadden, Appeal No. 95-0013, decided January 17, 1996, *aff'd* January 18, 1996.

⁸See, Prowler Partnership v. Gainhart Samuelson, Appeal No. 95-0084, Decision on Reconsideration (Part I), March 12, 1996.

by a "dissolved partnership" under the IFQ regulations.

Under the IFQ program, as implemented by the Division, a partnership is "dissolved" when there is a change in partners. The Division's interpretation conforms with the Uniform Partnership Act, which recognizes that a change in partners dissolves a partnership, and creates a new partnership.⁹ It also adheres to the commonly recognized principle of partnership law that the dissolution of a partnership is not the same as the termination of one.¹⁰ Thus, the fact that Maring, Inc., and Anderson, Inc., assumed all the rights and obligations of their former partner, and continued the partnership under the same name, is irrelevant. The fact that the Partnership continued does not mean that it was not dissolved.

The Division's conclusion is reasonably related to an intended purpose of the IFQ program, which is to extend the initial benefits of the program to those who participated in the halibut or sablefish fishery during the QS qualifying years.¹¹ Respondent was such a participant through his role in the Partnership. The provision within 50 C.F.R. § 679.40(a)(2)(iii),¹² which allows a former partner of a dissolved partnership to receive the QS benefits of the partnership, was intended for the kind of cases such as Respondent's, and I find that not treating the Partnership as dissolved would circumvent the purposes of the IFQ program. If the Partnership is not deemed dissolved, Respondent (and any other former partner) would be excluded from the benefits of the IFQ program, in spite of its ownership interest in a vessel that made legal landings during the qualifying period. New partner(s) would be able to receive the benefits of QS or IFQ without either having owned or leased a vessel during a QS qualifying year, or of having met the QS or IFQ transfer and use restrictions of 50 C.F.R. §§ 679.41 and 679.42.¹³

⁹See, the Uniform Partnership Act, Official Comment to Section 41, Subdivision. See, e.g., Alaska Statute § 32.05.240 which provides: "The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." We recognize that § 27 of the UPA (1914) states that "A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership . . ." But it is clear in this case that the Respondent not only sold his interest; he also "ceased to be associated in the carrying on of the business."

¹⁰See, e.g., Alaska Statute § 32.05.250: "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

¹¹ For a background reading of the intended purposes of the IFQ program, see the Federal Register, Vol. 58, No. 215, November 9, 1993, at 59379-59380.

¹²Formerly 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.

¹³Formerly 50 C.F.R. §§ 676.20 and 676.21.

Appellant argues that "[p]artnership law is clear that, notwithstanding the general rule that withdrawal of a partner will cause a dissolution, partners can by written agreement nullify the general rule and elect to maintain and continue the existence of the partnership." [Appellant's Statement in Support of Appeal, at 3] While this may be correct with respect to Washington state partnership law, the Division is not bound by this exception to the general rule when deciding how to reasonably interpret or define terms in IFQ regulations solely for the purpose of implementing the IFQ program.

Appellant argues that an addendum to the sale agreement, in which the remaining partners agree to indemnify Arctic Select and its owner, Robert Harrington, for any acts or failures by the Partnership after 1990, is inconsistent with Respondent's position that the Partnership has been dissolved. This argument overlooks the reciprocal provisions in the addendum in which the Respondent and Mr. Harrington indemnify the Appellant and its principals for acts or failures occurring before October 15, 1988, and to share in one-half of any liability for the period from October 15, 1988, through the date of transfer of the vessel. I do not agree that these provisions are inconsistent with the Division's view that the Partnership was dissolved. They merely provide for the respective liabilities of the parties following the dissolution. In any event, as previously stated, the Division is not bound by the provisions of a private agreement.

Appellant argues that even if the Partnership was dissolved by operation of law when the Respondent transferred his interests, the Respondent is not entitled to receive any QS as a former partner. Appellant's argument rests on the proposition that a dissolution of the Partnership could not have until the Respondent had completed the transfer of his entire interest in the Partnership. Therefore, Appellant reasons, the Respondent had no remaining interest in the Partnership upon dissolution. Since, under 50 C.F.R. § 679.40(a)(2)(iii), a former partner may receive QS only in proportion to the partner's interest in the dissolved partnership, the Respondent should get nothing.

This argument is based on a misreading of the regulation. The Appellant assumes that a former partner's interest in the partnership is measured *after* the dissolution has been completed. Such an interpretation would deny all former partners of dissolved partnerships their rightful QS and would render the regulation meaningless. The proper reading of the regulation must be that the former partners' interests are measured as of the last moment when they were all still partners. Thus, the Appellant's argument is without merit.

In sum, the Division's interpretation of what constitutes a "dissolved" partnership for purposes of the IFQ program is a reasonable one. The Division has consistently taken this view, which (1) corresponds with the general rules of partnership law; (2) allows for a consistent approach to the question of when a partnership has been dissolved, regardless of variations in state laws and regardless of the states in which the partners or former partners reside; and (3) is reasonably intended to further the purposes of, and facilitate the implementation of, the IFQ program. I find, therefore, that the entity that owned the vessel during the QS qualifying period was a partnership composed of Respondent, Mark Maring, Inc., and Neil Anderson, Inc. For the purposes of the IFQ program, that entity was dissolved on January 1,

1991. I conclude that, as a former partner, Respondent is eligible to receive QS based on the proportionate share of its ownership interest in the Partnership, i.e., 50 percent.

2. Whether Respondent lost its eligibility for QS when it transferred its interest in the Silver Ice Fisheries Partnership to Maring, Inc., and Anderson, Inc.

Appellant claims that when it purchased Respondent's interest in the Partnership it acquired the rights to Respondent's initial issuance of QS. This Office has previously ruled that the IFQ regulations do not provide for assignments of initial QS eligibility.¹⁴ The Division has consistently refused to recognize and enforce private agreements that purport to assign eligibility for the initial issuance of QS. The Division is not bound by the terms of any such agreement between the parties.¹⁵ The issuance of QS is governed by the IFQ regulations, not by the terms of a private agreement. Therefore, I conclude that the Respondent did not lose eligibility for QS when it transferred its interest in the Partnership. The Appellant must look to another forum to enforce any contractual rights it may have as a result of the sale agreement.

FINDINGS OF FACT

1. During the 1989 and 1990 QS qualifying years, the F/V BLUE ICE was owned by the Silver Ice Fisheries Partnership, consisting of Respondent, Mark Maring, Inc., and Neil Anderson, Inc.
2. On January 1, 1991, Respondent sold its entire interest to Mark Maring, Inc., and Neil Anderson, Inc., and was no longer involved in the Partnership's activities.

CONCLUSIONS OF LAW

1. The Partnership was dissolved January 1, 1991, for purposes of allocating QS under the IFQ program.
2. The Respondent did not lose eligibility for QS when it transferred its interest in the Partnership.
3. The Respondent is eligible to receive QS as a former partner of the dissolved Partnership.

¹⁴Prowler Partnership v. Samuelson, Decision on Reconsideration (Part I), Appeal No. 95-0084, March 12, 1996, *aff'd* March 14, 1996; *See also*, Cadden v. Levenhagen and Pugh, Appeal No. 95-0013, January 17, 1996, *aff'd* January 18, 1996; and Alwert Fisheries, Inc. v. Oregon Seafood Producers and Dorothy L. Painter, March 21, 1996, *aff'd* March 27, 1996.

¹⁵Prowler, *supra*, at 4.

DISPOSITION

The Division's IAD, involving a conflict between the Respondent and the Appellant over the allocation of qualifying pounds of halibut and sablefish landed from the F/V BLUE ICE, is AFFIRMED. This decision takes effect on November 29, 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 8, 1996.

Because the prevailing party in this appeal still has an opportunity to receive QS and the corresponding IFQ for the 1996 fishing season, we 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.

James Cufley
Appeals Officer

Edward H. Hein
Chief Appeals Officer