

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)
)
 ESTATE OF JULIAN BASARGIN,)
 FETINIA BASARGIN,)
 PERSONAL REPRESENTATIVE) DECISION
 F/V CRUISER)
 ADF&G # 56358)
 Appellant)
 _____)
 December 1, 1999

STATEMENT OF THE CASE

On June 6, 1996, the Restricted Access Management Division (RAM) program issued an Initial Administrative Determination (IAD) on Reconsideration to Fetinia Basargin, which denied the application by the Estate of Julian Basargin for a vessel moratorium qualification and permit under the Vessel Moratorium Program on Groundfish and Crab.¹ The Reconsideration affirmed RAM's earlier IAD of February 23, 1996. Both IADs concluded that the Estate had not proven that the decedent owned the F/V CRUISER at the time of application. RAM referred this case to this Office for filing as an appeal. Because the record contains sufficient information on which to reach a final decision and because there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered. 50 C.F.R. § 679.43.

ISSUE

Is the Estate of Julian Basargin entitled to a vessel moratorium qualification and permit for the F/V CRUISER?

BACKGROUND

Fetinia Basargin filed an application for a vessel moratorium qualification and permit on January 8, 1996. The application claimed ownership of the F/V CRUISER and listed the owner of the vessel as "Estate of

¹ The Vessel Moratorium Program for Groundfish and Crab, 50 C.F.R. § 679.4(c), which expires on December 31, 1999, should not be confused with the North Pacific License Limitation Program (LLP), 50 C.F.R. § 679.4(k). As of January 1, 2000, a license limitation permit will be necessary to harvest certain species of groundfish in the Gulf of Alaska and Bering Straits/Aleutian Islands (BSAI) areas and Tanner and king crab in BSAI. The application period for LLP runs from September 13, 1999 through December 17, 1999. For further information on LLP, the Estate may contact Restricted Access Management (RAM), NMFS, Box 21668, Juneau, Alaska 99802-1668, 907-586-7474 or 1-800-304-4846 (option 2). The NMFS website at "<http://www.fakr.noaa.gov>" also has information on LLP.

Julian Basargin, Heir: Fetinia Basargin.” The Estate stated in its application that the vessel was lost or destroyed after January 1, 1988 and that it was neither salvaged nor reconstructed. Contrary to the instructions on her application, the Estate did not attach a U.S. Coast Guard Form 2692, Report of Marine Accident. The application claimed that the vessel was a qualified vessel because it had made landings of moratorium groundfish species with hook, pot and trawl gear between January 1, 1988 and February 9, 1992.

The Official Record for the Moratorium Program does show that the F/V CRUISER is a qualified vessel, entitled to a permit to harvest moratorium groundfish with hook, pot and trawl gear. RAM, however, denied the Estate’s application in its IAD of February 23, 1996 because the Estate had not shown that it was the current owner of the vessel. RAM stated that its records showed Aerofeefin Basargin as the owner of the vessel.²

The Estate, through a letter from Fatinia Basargin, asked RAM to reconsider its decision and submitted four documents as evidence of ownership: [1] Coast Guard form Form 330, Certificate of Ownership of Vessel Ownership dated July 25, 1988, showing Julian Basargin as the sole owner of the F/V Cruiser; [2] a Preferred Mortgage of Vessel dated July 12, 1988 showing Julian Basargin as the owner and his indebtedness to Seattle-First National Bank of \$107,000; [3] a promissory note signed by Julian Basargin, dated June 28, 1988, showing the indebtedness to Seattle-First National Bank; [4] a Bill of Sale for the F/V CRUISER, dated March 31, 1994 stating that Alex Erofeeff had purchased the vessel on August 1, 1989 and began operating it on that date; and [5] Letters of Administration, dated September 27, 1989 issued by the Circuit Court of Washington County, Oregon appointing Fetinia Basargin Administrator of the Estate of Julian Basargin.

RAM reviewed this evidence and issued an IAD on Reconsideration on June 10, 1996. RAM denied the claim because the evidence submitted by Ms. Basargin did not prove that the Estate was the owner of the F/V CRUISER at the time of application.

On November 1, 1996, in a case arising under the Individual Fishing Quota Program for Pacific halibut and sablefish, this Office concluded that the owner of the F/V CRUISER was Nazary Basargin from December 22, 1989 until at least December 17, 1991.³ The competing applicants were Alex Erofeeff and Nazary Basargin. Both Mr. Erofeeff and Mr. Basargin, as well as Fetinia Basargin, testified at the hearing. Mr. Erofeeff and Mr. Basargin submitted written briefs in support of their respective claims.

² The competing applicants for title to the F/V CRUISER in Erofeeff v. Basargin, the IFQ appeal discussed in the text accompanying note 3, were Alex Erofeeff and Nazary Basargin. The name “Aerofeefin Basargin” appears to be a combination of those two names. In any event, RAM denied the application because its records did not show the owner of the F/V CRUISER as Julian Basargin or the Estate of Julian Basargin or Fetinia Basargin. Neither does the abstract of title.

³ Erofeeff v. Basargin, Appeal No. 95-0086, November 1, 1996.

The file on appeal in Erofeeff v. Basargin contains a U.S. Coast Guard abstract of title for the F/V CRUISER. Whether supplied by the parties to an appeal or obtained by this Office directly, this Office will review the abstract of title for a vessel when ownership is in question. The abstract shows the vessel was sold by Fetinia Basargin, Personal Representative of Julian V. Basargin, by Bill of Sale on December 22, 1989 to Nazary Basargin and that Nazary Basargin was the owner of the vessel until December 1991. A copy of correspondence submitted in Erofeeff v. Basargin indicates that the F/V CRUISER was totally destroyed by fire in 1991.

DISCUSSION

Under the Moratorium Program, a moratorium permit is to be issued to the owner of the vessel at the time of application. 50 C.F.R. § 679.4(c)(6).⁴ A moratorium permit is based upon the vessel having moratorium qualification, which means that the vessel made landings of moratorium species during the qualifying period of January 1 1988 through February 9, 1992 or obtained a transfer of a moratorium qualification from a vessel that made such landings.⁵ A vessel's moratorium qualification may be severed from the vessel, but the current vessel owner is presumed to be the owner of the vessel's qualification unless otherwise specified in an agreement or contract.⁶

The Estate's evidence supports the position that Julian Basargin owned the F/V CRUISER as of July 12, 1988 and that Alex Erofeeff owned the vessel beginning August 1, 1989. The abstract of title supports the position that Julian Basargin owned the boat as of July 12, 1988 and that Fetinia Basargin, as personal representative of the Estate of Julian Basargin, transferred title to the boat to Nazary Basargin on December 22, 1989. Neither the Estate's evidence nor the abstract of title supports the position that the Estate or the decedent owned the F/V CRUISER on January 8, 1996 when the Estate, through Fetinia Basargin, applied for a moratorium qualification and permit. The record contains no allegation or evidence of an agreement to sever ownership of the F/V CRUISER from ownership of the moratorium rights of the F/V CRUISER. Since the Estate did not own the F/V CRUISER at the time of application, I conclude that the Estate did not own the moratorium rights of the F/V CRUISER

Therefore I conclude that the Estate of Julian Basargin is not entitled to a moratorium qualification and

⁴ 50 C.F.R. § 679.4(c)(6), formerly 50 C.F.R. § 676.5(b); Yukon Queen Fisheries, LLP, Appeal No. 96-0009 at 3 & n.3, September 17, 1998; Wallace Botsford, Appeal No. 96-0043 at 3 & n.6, November 1, 1999.

⁵ 50 C.F.R. § 679.4(c)(7)(i) and (ii). Moratorium crab are Tanner and king crab harvested in the Bering Sea and Aleutian Islands area (BSAI). Moratorium groundfish are species of groundfish, except sablefish caught with fixed gear, harvested in the Gulf of Alaska or in BSAI. 50 C.F.R. § 679.2.

⁶ In re Application of Yukon Queen Fisheries, LLP, Appeal No. 96-0009 at 3 & n.3; Wallace Botsford, Appeal No. 96-0043 at 3 & n.6, November 1, 1999; Final Rule, 60 Fed. Reg. 40,763, 40,766 (1995).

permit for the F/V CRUISER.

FINDINGS OF FACT

1. The Estate of Julian Basargin was not the owner of the F/V CRUISER when it applied for a moratorium qualification and permit for that vessel.
2. The moratorium rights of the F/V CRUISER had not been severed from the F/V CRUISER.
3. The Estate of Julian Basargin was not the owner of the moratorium rights of the F/V CRUISER when it applied for a moratorium qualification and permit for that vessel.

CONCLUSION OF LAW

The Estate of Julian Basargin is not entitled to a moratorium qualification and permit for the F/V CRUISER.

DISPOSITION

The IAD on Reconsideration that is the subject of this appeal is AFFIRMED. This Decision takes effect January 3, 2000, unless by that date the Regional Administrator orders review of the Decision.

Any party, including 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, December 13, 1999. 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 or points and authorities in support of the motion.

Mary Alice McKeen
Appeals Officer